OLC 75-0526/b

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Executive Registry
75-3062

31 OCT 1975

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for comments on S. 774 and S. 815, bills designed to regulate lobbying in connection with Congressional and Executive action. This Agency, of course, defers to Congress on matters concerning lobbying directed at Congress. With respect to the regulation of lobbying directed at the Executive branch, our interest is limited to the concern that overbreadth of language will inhibit this Agency's foreign intelligence gathering mission.

S. 815 would require individuals who regularly attempt to influence the "policy-making process" of the Executive branch to register with the Federal Election Commission, record their contacts with Executive branch officials, and file quarterly reports on these contacts with the Commission. Section 3(b) defines "policy-making process" as "any action taken by an Executive employee with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the Executive branch." The examples of rules and adjudications cited in the definition suggest an intent to limit the bill to administrative and regulatory actions. Under the doctrine of ejusdem generis, the term "other action," also cited in the definition of "policy-making process," would be confined to the same kinds of public interest matters enumerated, e.g., rules and adjudications.

The Central Intelligence Agency was established by the National Security Act of 1947 to provide policy-makers with information on foreign areas and developments. It is not a policy-making agency; though supplying U. S. policy-makers with intelligence assessments, it does not formulate or advocate policy positions. In light of the above, if section 3(b) were interpreted to apply strictly to influencing the administrative actions of regulatory agencies, the Central Intelligence Agency would have no direct interest in such regulation. I would point out that such coverage would be consistent with the apparent public interest objectives of the legislation.

However, section 3(b) could be interpreted to cover the administrative actions of all Executive agencies. It could also be construed most broadly to cover "any action" taken by an Executive employee. If either of these two constructions is intended, situations might arise in which the proposed regulations would conflict with this Agency's statutory charter. For example, it is

possible that officials of a private company which has developed a new intelligence technology, e.g., an electronic collection device, would seek to demonstrate the feasibility and utility of the system to the Agency. Under sections 4(a)(4) and 6(c), (d), (e), (f), (h), (i), the communicating official would be required to disclose the identities of Agency personnel and the subject matter of the communication. This would result in the disclosure of sensitive information and would conflict with the statutory authorities which charge the Director of Central Intelligence with the protection of Intelligence Sources and Methods (50 U.S.C. 403), and which exempt CIA from laws requiring disclosure of Agency organization and personnel [50 U.S.C. 403(g)].

These comments also apply to section 2(2) of S. 774, which defines policy-making process as "any action taken ... with respect to any rule, adjudication, or other policy matter in the Executive Branch."

If it is the intent of the Committee to apply the bill to the administrative actions of regulatory agencies, I would merely suggest that this scope be more clearly defined. If broader application is contemplated, however, it is requested that some accommodation be made for the considerations discussed above. We would be pleased to consult with the Committee in working out appropriate modifications.

Because of its broader coverage, section 7 of S. 774 raises more serious problems. S. 815 has no comparable provision. Under section 7, certain Executive branch employees would be required to record each oral or written communication received from "outside parties expressing an opinion or containing information" with respect to the policy-making process. These records, available for public inspection, would contain the identities of the contacted employee and the outside party, the subject matter of the communication, and the action taken in response to the communications.

It is noted that this section uses the undefined term "outside party" in lieu of the term "lobbyist" used elsewhere in the bill and defined in section 2(1). Also, the phrase "communication ... expressing an opinion or containing information" is used rather than the term "lobbying" defined in section 2(9) as communication made to influence the policy-making process. This shift in language and the potentially broad interpretation of "policy-making process" would extend the requirements of section 7 to communications not generally considered lobbying activities. Such overbroad coverage would seriously impair this Agency's ability to function.

The requirement that the opinions or information of any outsider concerning "policy matters" be made public would make impossible the essential confidentiality upon which this Agency's outside sources of information insist. Where sensitive matters are involved, this requirement would impair CIA's access to outside judgments and viewpoints--such as those which a Congressman, academician, former government official, or foreign intelligence service might offer.

I urge that section 7 of S. 774, if adopted, be strictly limited to traditional lobbying activities by lobbyists, as defined in section 2(10) of the bill. Additionally, as discussed above with respect to section 3(b) of S. 815 and section 2(2) of S. 774, the proposed disclosure of the identity of the contacted employee, the subject matter of the communication, and the action taken in response to the communication would conflict with statutory authorities pertaining to the protection of Intelligence Sources and Methods (50 U.S.C. 403) and exempting the CIA from laws requiring disclosure of Agency organization and personnel [50 U.S.C. 403(g)].

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

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OLC 75-0527

United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

March 14, 1975

Office of Congressional Affairs
Central Intelligence Agency
Washington, D.C. 20505

Re: S. 774

Attached is a copy of a bill which has been referred to the Government Operations Committee for consideration.

The committee would appreciate your views regarding the provisions of this bill and any recommendations which you may have concerning possible committee action.

Please transmit your reply in quadruplicate.

Your prompt attention would be appreciated. Thank you for your cooperation.

Sincerely,

Abe Ribicoff
Chairman

Enclosure

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United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
WASHINGTON, D.C. 20510

March 14, 1975

Office of Congressional Affairs
Central Intelligence Agency
Washington, D.C. 20505

Re: S. 815

Attached is a copy of a bill which has been referred to the Government Operations Committee for consideration.

The committee would appreciate your views regarding the provisions of this bill and any recommendations which you may have concerning possible committee action.

Please transmit your reply in quadruplicate.

Your prompt attention would be appreciated. Thank you for your cooperation.

Sincerely,

Abe Ribicoff

Abe Ribicoff
Chairman

Enclosure