

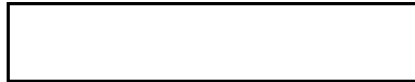
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OLC 79-1363

23 APR 1979

MEMORANDUM FOR: See Distribution

FROM:



Assistant Legislative Counsels

SUBJECT: H.R. 2465, Privacy Magnum Opus

1. Attached for your timely review is subject legislation which seeks to expand several areas in the field of "Privacy Law" as well as create new privacy rights in several areas.

2. The bill, introduced by Representative Richardson Preyer (D., N.C.), is a patchwork attempt selectively choosing parts of other previously introduced or, in some cases, not yet introduced Administration sponsored privacy measures. While this Office has worked closely with White House staff on the individual bills and, by and large, is comfortable that CIA equities are adequately protected therein, a cursory reading of H.R. 2465 presents several major problems as follows:

-- Title I creates the Federal Information Practices Board (Board). The Board is given broad and sweeping investigatory authority relative to all Federal agencies' compliance with the various Privacy laws. In addition, the Board's authority includes such provisions as:

- power to hold hearings
- receive (demand) evidence
- order testimony by deposition
- subpoena power

Moreover, the Board is given, via Subparagraph 104(a)(1) appearing at line 11 on page 10, "access to any information or data in the possession or control of any officer or entity of the Federal Government without regard to any provision of law or order or regulation issued thereunder imposing a restriction on access to or disclosure of such information or data..."(emphasis added)

-- Title II amends the "Privacy Act", Section 552a of Title 5, U.S.C. It appears that this amendment rewrites in toto the Privacy Act as we know it. More importantly, the CIA line item appearing in the present law has been eliminated. Although Subparagraph 202(b)(3)(A)(i) beginning on line 23, page 20 attempts to give a partial exemption, it is clear that the language is, at best, insufficient to cover intelligence equities. This Title must, therefore, be reviewed with extraordinary care by relevant addressees.

-- Title III denies access, generally, to third party held records by Federal officers.

-- Title IV directs States to comply with certain delineated provisions of Federal law, none of which apparently affect CIA.

-- Title V is a truncated version of the Medical Records Privacy Act. Unlike all of the several versions of the bill introduced, Title V provides no CIA exemption and thus must be severely amended.

-- Title VI amends the Fair Credit Reporting Act.

-- Title VII deals with the Tax Records and on first reading appears to have no affect on CIA.

-- Title VIII provides for privacy of educational records.

3. As noted earlier, the Carter Administration has introduced or will introduce shortly, bills dealing with some of the above cited areas of Privacy law. In light of that fact, at least Titles V and VI have, in their present form, a lessened chance of passage. The remaining have a better chance of receiving a hearing. Even those Titles, however, have little chance of passage without strong Administration support. Since the present bill is not moving and is unlikely to move without Administration support, we are referring this bill to your attention for your information only. Should the bill begin to move we will recontact you requesting formal comments. However, should you wish to comment before then, please feel free to contact either of the undersigned to register your comments.

Assistant Legislative Counsel

Assistant Legislative Counsel

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Approved For Release 2004/04/15 : CIA-RDP83-00156R000300010057-2

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