



DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

June 23 1966

Honorable Charles Schultze
Director, Bureau of the Budget
Washington, D. C.

Dear Mr. Schultze:

In reply to the request of your office, the following report is submitted on the enrolled enactment S. 1160, "To amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes." The bill provides for amendment of section 3 of the Administrative Procedure Act so as to make information and records relating to the operation of governmental agencies and departments generally available to the public with limited specified exemptions.

The indicated objective of the bill to provide the opportunity for an informed citizenry with respect to the activities of Government is a desirable one. This Department has recognized the desirability of such objective as indicated in the introduction to its published regulations governing the availability of departmental records reading as follows:

"It is the policy of this Department to make its official records available to the public to the maximum extent possible. This policy recognizes that, generally, knowledge of the affairs and activities of Government is a right of citizens and is in the public interest."

However, because of the use in the bill of general and in many instances ambiguous language, it was necessary for the Department in its report on this legislation to point out a number of substantial problems which could be anticipated. Examples of these problems are:

1. The exemption for investigation files is limited to investigations for the enforcement of laws. This fails to recognize the fact that a substantial percentage of the investigations conducted by this and other departments is for the purpose of determining compliance with contracts, loan requirements, or other non-regulatory programs of the Department and the maintenance of the confidentiality of such investigations is equally important to the public interest.

BUREAU OF THE BUDGET

JUN 23 10 33 AM 1966

RECEIVED

2. The bill makes no provision for the maintenance of confidentiality of information furnished to the Government by any person in confidence or under an assurance of confidentiality by the Government agency; e.g., confidential information with respect to violations of governmental programs or in the case of marketing orders under the Agricultural Marketing Agreement Act of 1937, as amended, the ballots of producers in referendums in connection therewith which are by regulation of the Department held to be received in confidence to protect producers from economic duress in connection with their voting.

3. The bill provides for indexing of all interpretive statements which would include all responses to requests for advisory information which would involve a meaningless burden unless limited to interpretive statements of precedential character.

4. Staff manuals or instructions are required to be made available without exception including those relating to enforcement activity or internal standards of a confidential nature.

The House Committee Report on the bill considers these and other problems and indicates interpretations of the language which would avoid or mitigate a number of the difficulties raised by the general and ambiguous language in the bill. In some instances some of the language in the bill is sufficiently definite to raise a question as to whether the courts would have recourse to this legislative history.

It is recognized that because of the laudable general objective of the bill it may be determined to be desirable and necessary to approve the bill notwithstanding its indicated shortcomings. In such event it may be desirable and helpful to have the message or statement issued in connection with such approval specifically deal with the interpretations set forth in the House Report to avoid the unwarranted difficulties which might arise in absence of such interpretations.

Sincerely yours,



RECEIVED OF THE SENATE

JAN 53 10 23 AM 1953

RECEIVED