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As in the Watergate debacle, the umbrella of "national security" is now being raised in the veto message to cover the real reasons for the bureaucrat's opposition to the public's right to know. The message itself is filled with inaccurate statements, misconceptions, and warped interpretations of the bill language that raised questions as to whether anyone really knowledgeable about the law even took the trouble to read and analyze the provisions of H.R. 12471. Contrary to the President's expressed view, the bill would not in any way bare our Nation's secrets, nor would it jeopardize the security of sensitive national defense or foreign policy information.

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But the obvious public need for truly "open government" must not be sacrificed on the altar of bureaucratic secrecy, suspicion, and meaningless slogans. The hard lessons learned from the Watergate coverup must certainly result in some positive achievement to prove to the American people that Congress -- at least -- is sensitive and responsive to the fundamental need for "open government" in the conduct of our public business.

William S. Moorhead (D-Penn) served as chairman of the House Subcommittee on Foreign Operations and Government Information and was instrumental in guiding the 1974 amendments through the House. The above is excerpted from his floor remarks made prior to the House override of President Ford's veto of the 1974 amendments.

Robert L. Saloschin

The Early Days: Hearing Aids, Hot Dogs, and Travel Vouchers

In 1969, Consumers Union won a suit against the Veterans Administration for records of the V.A.'s tests on commercial hearing aids which it buys for veterans. The court construed several exemptions adversely to the government. To screen out defending in court such misguided denials, Bill Rehnquist (now Chief Justice of the Supreme Court) and Bill Ruckelshaus created the DOJ Freedom of Information Committee. Shortly thereafter, Ralph Nader's people sought Agriculture Department tests of the fat percentages in various brands of hot dogs purchased in supermarkets by Agriculture inspectors. Agriculture denied access under Exemption 7 (law enforcement investigations), but the FOI Committee recommended that the Justice Department refuse to defend the denial, and the records were released.

Political appointees sometimes had more difficulty than career people in adjusting to the new law, since secrecy is more customary in the private sector. We had to tell ICC Commissioners that their travel vouchers for expenses on government trips were not

withholdable from newsmen, although some travel vouchers, for example those of law enforcement investigators, may be withholdable.

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From Mink Through Watergate

When the Supreme Court agreed in the *EPA v. Mink* case to decide whether classified records of underground nuclear tests were protected under Exemption 1, the Solicitor General invited my then boss, law professor Roger Crampton, to argue the government's case. He asked me to help him prepare, and we discussed expected questions from the bench, including whether a Top Secret stamp was always absolutely conclusive. We agreed that using it in a clearly unreasonable way would not be authorized, but the Court never asked that question. Instead, its 1973 decision in the government's favor left the clear impression that FOIA would protect a record even if the Top Secret stamp was applied in a wholly ridiculous or even corrupt way. Not surprisingly, this was changed when Congress amended the Act in 1974. Moral: If you want a durable result, it may be wise carefully to sidestep a possible appearance of excess.

The 1974 amendments came during an explosive growth in the use of FOIA, inundating the FOI committee with a flood of questions from agencies at a time when we were trying to conduct some dialogue with the Hill. Despite these pressures, I remember wondering what President Nixon expected to accomplish by continuing to insist on secrecy about Watergate. Today it is quite clear to me (and to others) that had he promptly released the whole story, it would have been a three-week sensation, and he would have ridden out the storm.

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Vulnerability Studies and "Harm"

The Mitre Corporation had done an exhaustive study for the government on the vulnerability of our nation's telecommunications systems to illegal penetration, but top officials needed something easier to understand. So a short Volume III was written about 1979 to explain how anyone could tap a suburban telephone, break into long-distance microwave circuits, or intercept business data communications. When the existence of Volume III became known, there were FOIA requests for it which created much concern. We were told a top AT&T official asked Vice President Mondale to try to protect it. We had trouble finding an exemption, but when we read the document itself, it became apparent that little harm was to be feared, because the instructions for amateur wiretappers called for climbing telephone poles, obtaining farms with correctly situated barns, and other difficult procedures. (Professional interceptors do not need these instructions, which in any case can be developed in engineering libraries). The document was finally released. There

are several morals: read the document before deciding how harmful its release might be; if the harm is real and serious, the chances that an exemption will work are better.

Robert L. Saloschin was the chairman of the DOJ Freedom of Information Committee and the director of the Justice Department's Office of Information Law and Policy. He is now associated with the Bethesda law firm of Lerch, Early, Roseman & Brewer.

Russ Roberts

The "Dear John" Letter

From 1975 into the late 1980s federal agencies experienced an explosion of Freedom of Information Act requests. This was owing to publicity surrounding enactment of the 1974 amendments to the FOIA over Presidential veto; increasing publicity about court cases, especially cases which by that time had reached the Supreme Court; and increased public awareness of the existence and usefulness of the FOIA for advocacy groups, public interest organizations, individuals, and, yes, businesses.

Once businesses discovered the FOIA as a means of obtaining government information that had not been previously available about themselves and their competitors under the old "need to know" practice, they began using FOIA's new concept of "right to know." In fact a cottage industry of companies whose new business was making FOIA requests for parties who wished to remain anonymous sprang up and whenever an agency awarded a contract or grant, they could anticipate an FOIA request. Sometimes there was even a "snowball" effect from such requests. When the successful bidder learned that nonexempt information about the bid and the contract had to be released, that company would then make an FOIA request for releasable information provided by other submitters.

The impact of this fell heavily on contracts offices.

At the Department of Health, Education, and Welfare (DHEW, now DHHS) the Director of the Division of Contract Operations was an old colleague dating back to my days as a public affairs officer before the FOIA was born. After the FOIA was passed and until 1975 the volume of FOIA requests involving contract records was very, very small. After 1975 as requests increased our amiable relationship continued and the Division of Contract Operations was very cooperative in providing requested records to the FOIA office. The relationship continued amiably even after the chief contracts officer hired a part-time college student to locate and copy contracts for my office.

Unfortunately, the part-time student researcher graduated and could not be replaced. It was a very frustrating time for my friend.

That's when I got what our attorney's began describing as the "Dear John" letter.