

THE WHITE HOUSE
WASHINGTON

July 11, 1974

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: KENNETH R. COLE, JR.
FROM: JERRY H. JONES
SUBJECT: Freedom of Information Act
Amendments (H. R. 12471)

7/30
Gene -
may I
have my full
file on FOI?
Pod

Your memorandum to the President on July 2, 1974 on the above subject has been reviewed and Option 2 -- Advise the conferees of your specific objections to the bill and strongly recommend that it be rewritten accordingly. -- of the Ash memorandum was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Al Haig
Roy Ash



THE WHITE HOUSE
WASHINGTON

ACTION

July 2, 1974

MEMORANDUM FOR: THE PRESIDENT
FROM: KEN *COLE*
SUBJECT: Freedom of Information Act
Amendments (H.R. 12471)

The attached memorandum from Roy Ash sets forth the objectionable features of the Freedom of Information Act Amendments, which have passed both Houses, and are going to conference.

Ash, Timmons, and I agree that our best course is to load up the bill with objectionable features in hopes of gathering sufficient votes in the Senate to sustain a veto. We therefore recommend Option 1.



THE WHITE HOUSE
WASHINGTON

June 28, 1974

ACTION

MEMORANDUM FOR: THE PRESIDENT
FROM: ROY L. ASH
SUBJECT: Freedom of Information Act
Amendments (H.R. 12471)

Some time within the next two weeks Senate and House conferees will be meeting on H.R. 12471, which would tighten up the Freedom of Information Act to promote greater disclosure of government information. Although there are differences between the House and Senate versions, each contains provisions of serious concern to a number of agencies--with some raising constitutional issues as well.

Background

On March 14, 1974 the House passed their version 383 to 8. There was little discussion of or reaction to the bill, and many members were probably unaware of its contents. The bill included amendments to current law which would:

- require the prompt publication by all agencies of document indexes to advise the public of categories of available information;
- set specific and stringent time limits for responding to requests for information and appeals from denials;
- permit in camera judicial examination of any withheld document (including classified material) to determine whether the withholding was appropriate, with the burden of proof on the withholding agency;



- allow courts to award attorney fees and costs to plaintiffs if the government does not prevail in litigation over withheld information; and
- provide for expedited trials whenever a member of the public decides to bring suit over a denial of information.

Efforts were made on the Senate side to secure a more favorable bill out of the Judiciary Committee, and a compromise version was produced on May 16. Although the reported bill moderated some of the above features, it contained a highly undesirable provision not in the House bill which would authorize a complainant to ask a court to find a withholding "without reasonable basis in law", following which the court would have to direct the agency head to suspend the responsible employee without pay for up to 60 days.

The Senate voted 64 to 17 to pass its version on May 30th, but not before some harmful amendments were added by Senators Muskie and Hart. The Muskie amendment voided one of the key compromise actions by deleting the special procedures for in camera inspection of classified documents which contained a presumption in favor of sustaining classification, giving the provision essentially the same effect as the House counterpart on in camera inspection described above. The Hart amendment modified the 7th exemption under present Freedom of Information Act disclosure requirements to provide greater public access to investigatory files.

Discussion

Although a conference date has not been set, we have learned that those members pushing this bill hope to have an agreed-upon version by mid-July. The conference membership is not particularly favorable, and at this point the odds are strongly against your receiving an acceptable bill. Both the Senate and House bills have several objectionable features in common, such as the provisions permitting in camera inspection of all documents, allowing attorney fees and costs to plaintiffs,

and requiring responses to requests for information within established time limits. Although the Senate provision for court-imposed sanctions against employees who withhold information is not in the House bill, and therefore could be dropped in conference, our information is that most House conferees appear eager to accept this provision. We are less certain about how the Senate provision allowing greater access to investigatory files will fare in conference.

All agencies who have been following this legislation are very concerned about its potential effect on their operations, although some provisions are of greater concern to certain agencies than others. The employee sanctions provision is highly troublesome to the Civil Service Commission, while CIA and Justice find the in camera inspection and investigatory files provisions very objectionable. And wholly apart from the issue of inspection, any provision for judicial review of the merits of an executive decision to classify information is opposed by White House Counsel as unconstitutional. All would undoubtedly recommend vetoes if those sections survive.

Options

1. Decide now to veto the bill, informing our friends so that efforts can be made to shape a bill with features justifying a veto.
Recommended by Ash, Cole, Garment, Timmons, NSC, and White House Counsel (Chapman).
2. Advise the conferees of your specific objections to the bill and strongly recommend that it be rewritten accordingly.
Recommended by Burch and Rush.
3. Decide now to sign the bill, and work with the conferees to clean it up as much as possible.

