



VETERANS ADMINISTRATION  
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS  
WASHINGTON, D.C. 20420

OCTOBER 18 1974

The Honorable  
Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

The Veterans Administration would like to volunteer its views with respect to the enrolled enactment of H.R. 12471, 93d Congress, "To amend section 552 of title 5, United States Code, known as the Freedom of Information Act."

The bill proposes to make a number of amendments of the Freedom of Information Act, so as to clarify, strengthen, and improve its operations. Among other things, it proposes to require publication of indexes of information affecting the public, such as final opinions, statements of policy, staff manuals and instructions, etc.; require the establishment of a uniform schedule of fees for the recovery of the direct costs of searching for, and duplication of, records, with a waiver of fees where the public interest dictates; authorize in camera examination of records by Federal courts to determine whether they come within one of the exemptions to the Act set out in 5 U.S.C. 552(b); establish limited periods within which agencies must respond to administrative requests for records and to pleadings filed under the Act; grant courts discretionary authority to award attorney fees and litigation costs incurred by the claimant in cases in which the Government does not prevail; authorize the courts to find that the action of agency personnel in withholding records raised questions of arbitrary and capricious action, in which case the Civil Service Commission would be required to initiate proceedings to determine if disciplinary action is warranted; and revise the provisions of 5 U.S.C. 552(b)(7) to permit an agency to withhold investigatory records only under certain limited conditions.



As the President noted in his letter of August 20, 1974, to the Chairmen of the Conference Committee then considering H.R. 12471, the Freedom of Information Act--in just over eight years--has proven to be a most worthwhile law in making the Government more responsive to the Nation's citizens. Perhaps some of the provisions of this bill would strengthen and improve that Act. However, the then pending bill also contained other, very objectionable provisions that were discussed in the President's letter. While the Conference Committee has revised these provisions, apparently in an effort to overcome the President's objections, we believe that the measure continues to have seriously objectionable aspects.

The bill would no longer require courts to direct suspension of employees of the Government who are found to have withheld records without a "reasonable basis in law", but it would require the Civil Service Commission to initiate disciplinary proceedings with respect to all responsible agency employees in any instance in which a Federal court determines that the withholding of the records raises questions of arbitrary and capricious action. As the President noted with respect to the earlier provisions, this provision would also have an "inhibiting" effect upon the vigorous and effective conduct of official duties.

The extremely limited periods within which agencies of the Government would be required to respond to both original requests for records and to pleadings filed under the Act would, we think, prove burdensome to departments and agencies, even to the point of being impossible to meet in many instances. We feel this is the case even with the "unusual circumstances" extension incorporated in the current version of H.R. 12471. While there can be no objection to the obvious intention of the Congress in this provision, i.e., to preclude delays in the release of requested information, we think it is quite obvious that there will be situations in which either the size of the workload confronting the agency or in which a difficult, less than clear-cut question is presented, will make the






mandatory periods quite impossible to meet. The Veterans Administration has encountered situations where the search for records in a large number of our field stations and the collection of those records in the office responding to the request has utilized a period considerably in excess of that which would be permitted under this amendment. Certainly, just the transmittal of papers between the agency involved, the Department of Justice, and the United States Attorney's office in a litigated matter would consume nearly all of the 30-day period this measure would allow for response.

We have been advised that the Department of Justice has recommended the disapproval of H.R. 12471 and has furnished a suggested veto message to your office. The Veterans Administration strongly endorses the position of the Department of Justice and urges the disapproval of the bill by the President.

Sincerely,

  
RICHARD L. ROUDEBUSH  
Administrator

