



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

JUN 24 1966

Dear Charlie:

We are pleased to submit, in response to the memorandum of the Assistant Director for Legislative Reference, dated June 21, 1966, the views and recommendations of the Atomic Energy Commission on S. 1160, an enrolled bill "t/o 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 enrolled bill would amend Section 3 of the Administrative Procedure Act, 5 U.S.C. 1002, to provide for increased availability of information in Government files to members of the public. It would principally do so by substantially altering and narrowing the exceptions to disclosure in the present law.

The language of the enrolled bill could on its face be construed to interfere seriously with this agency's performance of its statutory duties. If the legislative history of the bill were different, we should probably have had grave reservations about the bill. But the legislative history of the bill, particularly H. Rept. 1497, clarifies considerably the language of the bill, and the scope which Congress intends for the various exceptions to disclosure. We have analyzed the changes imposed by S. 1160 in the context of this legislative history and the bill's effect on Commission operations, and have reached the following conclusions on various provisions of the bill which could cause this agency the greatest difficulty:

1. The requirement of Section 3(b) that an agency make public "administrative staff manuals and instructions to staff that affect any member of the public" could be construed to interfere seriously with an agency's activities by requiring disclosure of such internal documents as instructions to contract negotiators and guidelines for auditors and inspectors. H. Rept. 1497 states, however, that

"... an agency may not be required to make available those portions of its staff manuals and instructions which set forth criteria or ~~guidelines~~ for the staff in auditing or inspection procedures, or in the selection or handling of cases, such as operational ~~tactics~~, allowable tolerances, or criteria for defense, prosecution or settlement of cases."

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This legislative history removes one of the most important reservations of the Atomic Energy Commission to Section 3(b) of the bill.

We approve the amendment which would make an order or rule enforceable against a person having actual knowledge and timely notice even though publication in the Federal Register has not occurred.

2. Section 3(d) would require that the final vote of each member of the Atomic Energy Commission in every agency proceeding be available for public inspection. We note, however, that this provision is subject to the exemptions of Section 3(e). We also note that Restricted Data would fall within the exemption for matters specifically exempted from disclosure by statute.
3. The language of Section 3(e)(6), exempting from disclosure "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy", would not by its terms clearly exempt from disclosure the names of persons exposed to radiation, which the Atomic Energy Commission specifically keeps confidential pursuant to regulation. H. Rept. 1497 indicates that the Section 3(e)(6) exemption applies to records heretofore kept confidential by individual agency regulation, that it covers files the "disclosure of which might harm the individual", and that the "exemption is also intended to cover detailed Government records on an individual which can be identified as applying to that individual". As so construed, we believe that Section 3(e)(6) is consistent with our current regulations.
4. The exemption of Section 3(e)(4) for "trade secrets and commercial or financial information obtained from any person and privileged or confidential" may on its face be construed to differ from the scope of 18 U.S.C. 1905, prohibiting the disclosure of certain business confidential information. But Section 3(e)(3) exempts matters "specifically exempted from disclosure by statute", and appears to require that the provisions of 18 U.S.C. 1905 be unaffected by S. 1160. H. Rept. 1497 specifically notes that the "statutes or parts of statutes which restrict public access to specific Government records ... would not be modified by the public records provisions of S. 1160."

We also note that the exemption for trade secrets covers information obtained from "any person". We read this exemption as covering information received in confidence from educational and other non-profit

institutions who are parties to, or are negotiating, contractual or comparable arrangements with the Commission, as well as from commercial enterprises. In fact, the House Report states that the exemption "would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government."

5. The Atomic Energy Commission presently exempts from disclosure confidential internal memoranda and reports prepared as part of the adjudicatory process. The exemption for "memorandums or letters ... not ... available by law to a private party in litigation with the agency" appears to cover this material, and the House Report confirms that the bill is intended to exempt from disclosure "documents or information which an agency has received or generated before it completes the process of awarding a contract or issuing an order, decision or regulation." This language also appears to cover minutes of non-public Commission meetings, and other information which might help a person to benefit improperly from a Commission program.
6. The changes in S. 1160 could pose difficulties for an agency such as the Commission in negotiating information exchange arrangements with technologically advanced nations under which certain unclassified technical information is provided in exchange for comparable data from other countries. The negotiation of such arrangements, under which the Commission can save significant funds and accelerate its technical program in the national interest, would become much more difficult if not impossible if "any foreign private party", without furnishing reciprocal benefits, could automatically obtain all the Commission's technical information. We believe that release of this type of information should be controlled in the interest of the national defense or foreign policy; and, if S. 1160 becomes law, we would anticipate requesting an Executive order exempting such material from disclosure pursuant to Section 3(e)(1) of the bill.

The Commission believes that there will be other areas which should properly be the subject of one or more Executive orders, and will be prepared to cooperate in drafting such orders.

Hon. Charles L. Schultze

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The Atomic Energy Commission is in sympathy with the underlying policy of full availability of information to the public. Moreover, in view of the comments made in this letter, the Commission believes that S. 1160 is largely consistent with its present rules, regulations, and practices. We take special note of the observation of Congressman Moss, in commenting on the bill, that

"This measure is not intended to impinge upon the appropriate power of the Executive or to harass the agencies of Government. We are simply attempting to enforce a basic public right--the right to access to Government information. We have expressed an intent in the report on this bill which we hope the courts will read with great care." (112 Cong. Rec. 13008 (daily ed. June 20, 1966).)

We therefore interpose no objection to the enactment of S. 1160.

Although we would anticipate added administrative costs resulting from the bill, we would have no way of presently estimating such costs.

Cordially,

A handwritten signature in cursive script, likely belonging to the Chairman mentioned in the text below.

Chairman

Honorable Charles L. Schultze
Director, Bureau of the Budget