

Memorandum

TO : William B. Saxbe
Attorney General

FROM : Robert G. Dixon
Assistant Attorney General
Office of Legal Counsel



DATE: May 7, 1974

What about
Communications
intelligence
intelligence sources
and methods

SUBJECT: Freedom of Information Act Amendments - S. 2543

Senator Kennedy's bill (S. 2543) to amend the Freedom of Information Act may come up for consideration and vote by the Senate Judiciary Committee this Wednesday.

For the past several weeks Malcolm Hawk of the Office of Legislative Affairs and a representative of Senator Hruska's office have been negotiating with Senator Kennedy's staff to try to reach a compromise on this bill. Possible agreement has been reached and Senator Kennedy has given his tentative approval. Now this Department must decide if we will agree to support the bill as modified.

The ten areas of compromise are:

AUTHORIZATION

OMB-NO

1. An authorization provision will be added to the bill to assist in financing the administration of the Act.

Line item of each agency's budget

INDEXES

2. Indexes of an agency's records will be published but only where necessary and practicable (rather than mandatory publication of all indexes as S. 2543 would require).

ANNUAL REPORT

3. Only the person who makes the decision to deny records will be identified in the annual report to Congress (e.g., in the Justice Department, only the Attorney General and an Assistant Attorney General, rather than all those who participated in the decision as in the present S. 2543). Also applies in denial letters.

ATTORNEYS FEES

OMB-NO

4. Attorney's fees will be paid out of the funds of the agency involved and not those of the Justice Department. We would prefer that no fees be assessable.

yes

Hruska
McClellan
Sweeney
Tucker
Eastland

?

Coal?
Fam? (negative)
Scott? (pro/able)
Byrd? (pro/able)

no

Mathias
Erwin
Kennedy
Hart
Daly
Tamm
Burdick

Computers

5. Fees for searching and duplicating records may encompass charges for computer time if records are computerized. Our preference would be to continue to be authorized to charge for the time it takes to screen documents.

In Camera
affidavit

6. A provision authorizing in camera inspection of national security classified documents would be included in the bill. While not the optimum provision on this point, the compromise language meets our basic requirements plus those of State, Defense and CIA. *judge must find "no reversible basis" for classifying documents before he can release*

Flexible Time Limits

7. A more flexible time limits provision than now in S. 2543 would be adopted. It would limit possible extensions of time to a single 10-working-day extension at either the initial action level or the administrative appeal level, but not both. This language is made acceptable by a change in the language of the bill so that the government will be allowed to plead in court failure of the requester to exhaust his administrative remedies even after the time limits have expired provided the government can show it is exercising due diligence to respond to the request.

Answer/Complaint

8. S. 2543 permits the Department only 20 days to answer a Freedom of Information complaint in court. The compromise version would extend this time to 40 days (rather than the present 60).

Sanctions
NOT IN HOUSE VERSION

9. Kennedy has refused to soften the proposed sanctions against officials responsible for improper withholding of records: a court-imposed suspension of up to 60 days pay. However, to reach an agreement he has now agreed to substitute for the pay suspension provision that "appropriate disciplinary or corrective action" selected by the agency head subject to judicial approval will be sufficient.

Files/records

10. S. 2543 would change "files" to "records" in the 7th exemption (investigatory law enforcement files). The FBI is strongly opposed to this change; Kennedy refuses to compromise. If our acquiescence on this provision is the only impediment to agreement, then we believe the FBI should be informed that it is necessary to yield on this point in order to reach the best attainable overall compromise.

*Staff go back on the 3 * sections. Same time, AG + Deputy start being friendly*

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This compromise reflects some major concessions on the part of the Administration; it also represents some steps back from his extreme position by Senator Kennedy.

If we agree to the compromise we will cease our opposition to the bill and, if it survives essentially intact in conference, recommend its approval. If we do not accept the compromise, we will have to prepare and defend our amendments in Committee and again on the floor. This will require a number of calls to Senators from you and the Deputy.

The Office of Legislative Affairs advises that Senator Kennedy and the media are set to wage a major campaign for S. 2543 and against any amendments. Our chances of getting a bill we can live with are not great. Ultimately, we must rely on the possibility of a Presidential veto to kill the bill. - Some observers have grave doubt that in this present Watergate climate, the President can afford to veto a bill to give citizens greater access to government information.

We gave Larry Silberman a briefing on this problem yesterday and he has some reservations about the compromise. OLC while not happy with all aspects of the arrangement feels that it may be the best possible solution if we desire to try to come forth with a workable piece of legislation. Malcolm Hawk in OLA and Hruska's staff man (who used to be in OLC) recommend concurrence with the agreement.

*Doug
Marvin*

