

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title:

Legal Research [1]

Staff Office-Individual:

Counsel's Office-White, Wendy

Original OA/ID Number:

CF 802

Row:	Section:	Shelf:	Position:	Stack:
21	5	1	1	v

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

PRIVACY ACT OF 1974

Mr. MURPHY of Illinois. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1419 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES 1419

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16373) to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Government Operations now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. MURPHY of Illinois. Mr. Speaker, I yield 30 minutes to the minority, to the distinguished gentleman from Ohio (Mr. LATTA), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1419 provides for an open rule with 1 hour of general debate on H.R. 16373, the Privacy Act of 1974.

House Resolution 1419 provides that it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Government Operations now printed in the bill as an original bill for the purpose of amendment under the 5-minute rule.

H.R. 16373 permits an individual to have access to records containing personal information on him kept by Federal agencies for purposes of inspection, copying, supplementation and correction, with certain exceptions, including law enforcement and national security records.

H.R. 16373 also allows an individual to control the transfer of personal information about him from one Federal agency to another for nonroutine purposes by requiring his prior written consent.

H.R. 16373 also provides a civil remedy

by individuals who have been denied access to their records or whose records have been kept or used in contravention of the requirements of the act. The complainant, if successful, may recover actual damages and costs and attorneys fees, if the agency's infraction was willful, arbitrary or capricious.

Mr. Speaker, I urge the adoption of House Resolution 1419 in order that we may discuss, debate, and pass H.R. 16373.

Mr. DERWINSKI. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Illinois. I will be happy to yield to the gentleman from Illinois.

Mr. DERWINSKI. Mr. Speaker, I had a number of questions about this rule and the bill, but the gentleman from Illinois (Mr. MURPHY) described it in such a truly effective fashion that I at this point do not have any questions. I commend the gentleman for the scholarly presentation.

Mr. MURPHY of Illinois. I thank the gentleman for that comment.

Mr. Speaker, I yield to the gentleman from Ohio (Mr. LATTA).

Mr. LATTA. Mr. Speaker, this rule, House Resolution 1419 provides for the consideration of H.R. 16373, the Privacy Act of 1974. There will be 1 hour of general debate on the bill and it will be open to all germane amendments. In order to preserve the normal amending process, the rule makes the committee substitute in order as an original bill for the purpose of amendment.

The general purpose of H.R. 16373 is to protect the privacy of individuals by regulating the Federal Government's collection and use of personal information.

The bill includes provisions to do the following things: (a) The bill permits an individual to have access to records containing personal information on him kept by Federal agencies for purpose of inspection and correction, with some exceptions, such as national security and law enforcement records. (b) The bill will make known to the American public the existence and characteristics of all personal information systems kept by every Federal agency. (c) The bill prohibits any Federal agency records from including information on political and religious beliefs unless authorized by law or the individual himself. (d) The bill provides a civil remedy by individuals who have been denied access to their records or whose records have been kept or used in violation of this act. The plaintiff may recover actual damages and costs and attorney's fees if the agency's violation was willful, arbitrary or capricious. (e) The bill provides that anyone who obtains a Federal record containing personal information by false pretenses is subject to a fine up to \$5,000.

Mr. Speaker, I would like to point out that on October 9 the President sent a message up here in which he stated as follows:

H.R. 16373, the Privacy Act of 1974, has my enthusiastic support, except for the provisions which allow unlimited individual access to records vital to determining eligibility and promotion in the Federal service

and access to classified information strongly urge floor amendments permit workable exemptions to accommodate situations.

The cost of implementing this estimated to be between \$200 million to \$300 million a year, with a one "start up" cost of \$100 million.

Mr. MURPHY of Illinois. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Ms. ABZUG. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16373) to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies.

The SPEAKER. The question is on the motion offered by the gentlewoman from New York (Ms. ABZUG).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 16373, with Mr. BRADEMAs in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California (Mr. HOLIFIELD) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. ERLBORN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. HOLIFIELD).

Mr. HOLIFIELD. Mr. Chairman, I yield 9 minutes to the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, it is with a deep feeling of honor and pride that I present to the House of Representatives today H.R. 16373, "The Privacy Act of 1974."

Like the Freedom of Information Act, this bill is also totally bipartisan. It was approved by the Committee on Government Operations by a unanimous roll-call vote of 39 to 0. It has the enthusiastic support of President Ford except on one point which the House itself will resolve when an amendment is offered on the floor. More important, I sincerely believe such legislation has the widespread support of the American people. I believe they want us to act on this bill without delay.

It seems to me that the events of the past several years have a lesson in them. Americans want to see more credibility in Government, and they want to see the removal of any undue Government power which could be used to invade their personal privacy.

This landmark legislation, H.R. 16373,

is a first step in that direction. It is in total harmony with the spirit of the Constitution. It gives individuals as a matter of right some meaningful control over how the Federal Government utilizes personal information about them.

H.R. 16373, when passed and signed by the President, will be the first comprehensive law dealing with the right of privacy of the individual citizen.

At the outset, I should state that this bill affects only personally identifiable files or systems of files held by the Federal Government. It does not seek to regulate those files maintained by State or local governments or by private entities.

Although this bill appears complicated on its face, it breaks down into four straightforward provisions: First, notice; second, access; third, regulation of disclosure; and fourth civil and criminal remedies.

NOTICE

Basically the bill provides that each and every system of records, as defined by the act, shall be made public by notice in the Federal Register. This notice shall list the essential characteristics of the system; the categories of persons to which it applies, its physical characteristics, the uses to which it is put, and the person responsible for its maintenance and operation.

ACCESS

Each individual shall be given access to his record within the system on his request, with the exception of files related to criminal investigations or national security. Along with access to the file, the individual concerned shall have the right to challenge inaccurate information and supplement the file to explain or contradict inaccuracies.

DISCLOSURE

Disclosure of the information by the agency holding the file shall be limited to those disclosures which are of the type previously announced in the Federal Register. Other disclosures of a "nonroutine nature" may be made only upon the prior written informed consent of the individual concerned.

REMEDIES

Civil damages are available to individuals who are injured by determinations made on the basis of inaccurate or incomplete records and criminal penalties are provided for illegal disclosure by Government employees, or fraudulent access by individuals.

I am going to say something very important now, especially in light of disclosures during the last week or so on the Federal Bureau of Investigation and the Internal Revenue Service. H.R. 16373 also prohibits the Government from keeping secret personal information systems and collecting records on political and religious beliefs. This proposed statute would thus provide greater safeguards for protecting the lawful exercise of first amendment rights.

The remainder of the provisions of the bill are designed to provide the legal teeth to enforce these rights and limitations. Special provision is made to protect America's legitimate and legally author-

ized interests in national security and law enforcement.

We have tried to tailor this bill so that it will protect individual rights and at the same time permit the Government to operate responsibly and perform its functions without unjustifiable impediments.

As a result, we think it will go a long way in restoring confidence by the American people that Government is indeed responsive and sensitive to individual rights. Simply put, this legislation will demonstrate that Congress is determined that Government will act as the servant of the people and not its master.

Under a key provision of this bill, no Federal agency shall disclose any personal information record to another agency or person unless this action is done by request of the individual or with his prior written consent.

An exception is permitted in the case of routine transfers, such as when the Social Security Administration instructs the Treasury to issue a benefit check.

Thus routine transfers of personal information will be permitted between agencies so that the regular business of Government can proceed without delay. Nonroutine transfers, however, are another matter. In those cases, the prior written consent of the individual will be required by law.

What is a nonroutine transfer? That is a transfer of personal information used for a different purpose than for which it was originally collected. This in itself is going to stop a lot of hanky-panky. It will make it legally impossible for the Federal Government in the future to put together anything resembling a "1984" personal dossier on a citizen.

It means interagency computer data banks will not be able to share personal information unless the data is truly a routine transfer where its general use has already been made known to the individual and his consent obtained.

The consent requirement and other provisions of the bill are backed up with criminal and civil penalties. This also will help protect Americans and at the same time give Government officials a good reason to say "no" to any improper requests from anyone for personal information on any other American.

This legislation also requires that Federal agencies, in making determinations on individuals, utilize records which are accurate, relevant, timely, and complete. This assures fairness to the individual and, in our view, is going to result in much better decisions by Government officials.

Senator ERVIN has referred to the situation existing now as "the Government's voracious appetite for personal information about each of us."

His subcommittee reported that the Federal Government has at least 858 data banks of which 741 were computerized. Although 93 agencies did not report the number of records kept, those which did, reported a total number of records kept as 1 billion, 245 million individual records or an average of almost 6 records for every man, woman, and child in America.

When such information is stored on tape it is easily transferred from one user to another.

The potential danger to individual freedom is so great that it is easy to understand why the concept of legislation to protect the privacy has support from a broad spectrum of political and philosophical beliefs.

I think the Members should be aware of the fact that in the event of the ure of Congress to act on this legislation the President intends to issue an Executive order which would put a similar vacy system into effect. However, would lack the necessary civil remedies and criminal penalties to provide our citizens with adequate redress. Besides, this task is a congressional responsibility and I think you will agree, we should face up to it.

On another matter, our subcommittee has received numerous phone calls from State tax commissioners asking whether their tax information transfer agreements with the U.S. Internal Revenue Service will be harmed by this bill. The answer is "no," because I am certain the Treasury Department will publish that type of activity as a "routine transfer" permitted under this bill and other statutes.

My colleagues, H.R. 16373 actually is the result of an awareness of the problems of invasion of privacy which began growing more than a decade ago when the House Committee on Government Operations started its initial investigations into this subject. Other committees also discovered what these problems are.

A lot of water has passed under the bridge since then. The Nation has survived numerous major and minor "floods." It is now time to build a strong dam to make certain we are not endangered again. I beseech you to support this bill and implement the Constitution, as we have a duty to do.

Mr. DENNIS, Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Indiana.

Mr. DENNIS. I thank the gentleman for yielding. With reference to the gentleman's statement that this would keep the Government from maintaining records as to political beliefs, would this bill prevent the Federal Bureau of Investigation from maintaining a list of Communist Party members or people who belong to organizations which are dedicated to the violent overthrow of the Government, or anything of that sort?

Mr. MOORHEAD of Pennsylvania. Lawful criminal investigations of that type would be exempt from the bill, but normal dissidents, exercising first amendment rights, would be covered.

Mr. DENNIS. If it hinged on the criminal field, it would come under the exemption which was referred to earlier?

Mr. MOORHEAD of Pennsylvania. The gentleman is correct.

Mr. DENNIS. And would the gentleman agree that if it dealt with individuals or organizations dedicated to the violent overthrow of the Government, that that would fall within the criminal exemption?

Mr. MOORHEAD of Pennsylvania. Anything that falls within the criminal exemption is taken care of. We have tried to prepare it very carefully.

Mr. DENNIS. Activity dedicated to violent overthrow of the Government would fall under criminal exemption, would the gentleman agree with me on that?

Mr. MOORHEAD of Pennsylvania. Yes. That is what I am saying.

Mr. DENNIS. I thank the gentleman.

Mr. HOLIFIELD. Mr. Chairman, I yield 5 minutes to the gentlewoman from New York (Ms. Abzug).

Ms. ABZUG. Mr. Chairman, this is indeed a landmark piece of legislation. H.R. 16373 regulates the collection, maintenance, and use by Federal agencies of information pertaining to individuals. It is a very significant first step in an attempt to guarantee the right of privacy to all Americans. It is the product of many, many months of hard work, and of many bills that have been before the Congress which the committee has considered in great depth. Much credit is due to my colleague, Mr. MOORHEAD of Pennsylvania, the chairman of the Foreign Operations and Government Information Subcommittee, and to that subcommittee's staff members for the months of diligent effort in the drafting of this significant legislation. The bill which has been reported out of the committee is a good bill, but I believe it is a bill which requires some additions and changes to strengthen it. The amendments which I plan to offer today in connection with this bill are amendments which would have been brought before the full committee, but, in order to expedite the consideration and the bringing of the bill to the floor of the House, they were left for floor action. So, although I support the bill and, indeed, have been the author of one of the bills before the committee, along with the gentleman from New York (Mr. Kucinich) and the gentlemen from California (Mr. Goldwater) who also had bills which were considered by the committee, I feel that there have to be some improvements.

There are three basic weaknesses in the bill: the numerous and unjustified exemption provisions, the failure to provide either liquidated or punitive damages, and the lack of any administrative mechanism to oversee the implementation of the bill.

First, exemptions from the provisions of this bill or of any bill designed to protect individual rights of privacy can be justified only in the face of overwhelming societal interests. There are, at most, only three areas where societal interests can be paramount to the individual rights provided in this bill: First, where granting an individual access to his or her records would seriously damage national defense or foreign policy; Second, where such access would interfere with an active criminal prosecution; and Third, where records are required by law to be maintained for statistical research or reporting purposes and are not, in fact, used to make determinations about identifiable individuals.

It follows that exemptions should relate to the type of data sought to be protected from disclosure, not to the agency maintaining such records. For this reason, I will offer amendments to eliminate the general agency exemptions provided in the bill for the CIA and the Secret Service.

I will also support an amendment to provide for the assessment of punitive damages in cases of willful, arbitrary, or capricious violation of the bill and for actual damages in cases of negligent violations. These provisions were stricken in the full committee, and, as a result, an individual who may have suffered by violation of the act must now prove not only actual damages but that such damages were caused by willful, arbitrary, or capricious agency action. I believe that these two stricken-out provisions must be restored to the bill to provide, as the bill in the other body does, for actual damages to compensate for any violation of the act and for punitive damages to compensate for any willful, arbitrary, or capricious violation. If this is not done, there really is no adequate remedy at law.

I will also support an amendment which I brought in the committee to establish a Federal Privacy Commission. Without such a commission, we have no assurance that agencies will not be motivated by mere whim or convenience in divulging or withholding information.

We would be more than naive if we failed to recognize that individual Federal agencies cannot be expected to take an aggressive role in enforcing privacy legislation. Enforcement of the provisions of this bill will be secondary to each agency's legislative mandate and will, of necessity, cause additional expense and administrative inconvenience. Only by providing a separate administrative agency with authority for implementing this legislation and for coordinating the privacy programs of the various Federal agencies can we be assured of uniform, effective enforcement of the rights guaranteed by this bill.

I would hope that we will support this bill with the amendments proposed. I think that will be the beginning of an important first step in the protection of the right of privacy.

Mr. ERLBORN. Mr. Chairman, I yield myself 5 minutes.

Mr. ERLBORN. Mr. Chairman, I rise in support of the Privacy Act of 1974, H.R. 16373. I think it is rather fitting that this bill comes to the floor today on the same day that we considered a motion to override and have overridden the President's veto on the Freedom of Information Act.

The Subcommittee of Government Operations, known as Foreign Operations and Government Information, is the parent subcommittee of both bills, the Freedom of Information Act and now this new Privacy Act. It has been quite an effort to walk a tightrope in the one bill to provide the maximum access to information on the part of the public, and in the other bill to limit access to protect an individual's privacy.

There has been a tendency, I think,

to view these often as conflicting, but I think that we have successfully walked that tightrope and have, in both of these pieces of legislation, very important landmark legislation for open government, and yet the protection of individual rights.

The Privacy Act of 1974 does several things that I am sure will be delineated and explained by the several Members who will be engaged in debate. Generally it requires that when the Federal Government does maintain a system of records pertaining to individuals, it must identify publicly those systems of records. There will no longer be the ability within Government to maintain secret systems.

Not only in the past has this been done for any nefarious purpose, but system of records may be instituted, maintained and the public just not know about it.

So that is the first thing that will be done: identify the systems of records and make public the fact that such records are being maintained.

Second, again a public record would be made of the purpose for which the system is being maintained. Then we would limit in the bill access to these records for those purposes so that information contained in those systems would be used only for those routine purposes, and unless the individual about whom the information related agreed to its use for other than routine purposes, it could not be so used.

It could be used then only for the routine purposes. This limits the purpose and the use of these information systems to the public purpose which has been made known, the purposes identified in the Federal Register.

Third, we provide for access by individuals to information in these record systems pertaining to himself or herself, so that a person about whom information has been collected will have an opportunity to get a copy of that information and to see if it is accurate and will have the procedure where he can request the amendment of the information to make it accurate and will have an opportunity if the information is misused under the terms of the act for recourse in a civil action through the courts.

In addition criminal penalties are provided for people within Government who violate the terms of the Act in making information available that they should not, thereby invading the privacy of the individuals about whom the information is maintained and also criminal penalties for those who would seek and obtain illegally this information.

I think this is truly landmark legislation. It has been very difficult to draft because of the varying systems and the varying purposes for the systems within the Federal Government. We were of course at times importuned to expand this to all record systems, not just of the Federal Government but of States and local governments and also in the private sector. I think if we had done so we would have bitten off more than we could chew.

I think we have here maybe a modest

beginning in the field of privacy but we have an important piece of legislation affecting only Federal Government systems.

We generally exempt from the provisions of this bill the law enforcement proceedings, systems for the criminal justice system, and other committees of Congress will be turning and already have turned their attention to this criminal justice field.

There is one amendment that I hope will be adopted. Several will be offered and I will offer one amendment and I hope it will be adopted and I think it is crucial in making this a workable bill. The bill as it has been reported by the committee and is before us today will open up all preemployment and security clearance files retroactively as well as prospectively. Just think of this. In the past years there have been implied and expressed promises of confidentiality given to people who have been asked to make statements concerning the security clearance investigation or preemployment investigation for those who would be employed by the Federal Government, appointed to Federal office, or Federal contractors engaged in defense work, let us say. These promises of confidentiality would be violated by this bill because the bill would mandate opening up these files so that the person about whom the investigation was conducted would have access to the files and find out who said what about them.

In the name of privacy we would be violating the privacy of those who have given such statements in the past. I think we have to strike a balance and see that we cannot violate the privacy of individuals by the very bill that is supposed to be the bill of rights for individual privacy.

The amendment I will offer was discussed in an editorial in the Washington Post this morning inaccurately. They say my amendment would close these preemployment and security files. It would not.

Mr. Chairman, the amendment that I will offer will make all of the information in these files available to the individual about whom the investigation has been conducted, except that information which would reveal the identity of a person who has under a promise of confidentiality given information contained in the file. Even the Washington Post editorial suggested that other legislation in the field of credit, the Fair Credit Reporting Act, had struck a good balance here by saying it is to protect only that information which would reveal a confidential source. They seem to think that was a good way of protecting both individuals' privacy. That is exactly what the amendment that I will offer will do. It will protect only those sources that have given information under a promise of confidentiality.

In addition, the Office of Management and Budget has assured me that regulations will be adopted in the future so that only in the most compelling circumstances will a promise of confidentiality be given. It will not be the customary thing to make these promises of

confidentiality, so that most all of the information will be made available.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. For the purpose of making legislative history, I should like to ask about the impact of this legislation as it affects one aspect of the current law.

I currently represent an area which at one time was represented by one of our predecessors in the Congress, the illustrious Jackson Betts, who was very concerned about the confidentiality of the Bureau of Census information.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ERLENBORN. I yield myself 2 additional minutes.

Mr. BROWN of Ohio. Mr. Chairman, the Bureau of the Census has a singular and highly commendable record of scrupulous protection of the confidentiality and privacy of census data about individuals and about businesses.

This is a matter of concern to every American, and the integrity of such information is essential to the public trust which is in turn essential to the accuracy of census findings.

These census findings provide the factual bases for: First, countless governmental and private decisions which profoundly affect the economy, second, equity and fairness in revenue sharing measures, and third, the determination of representation in the Congress.

The continuing confidentiality of such census information is mandated by statute—section 9 of title 13 of the United States Code—as affirmed by repeated Presidential proclamations.

It is true that neither the purpose nor effect of subsection (b) or (1) or of any other provisions of section 562a as set forth in this bill are to modify or relax in any way the safeguards of title 13?

Mr. ERLENBORN. Mr. Chairman, the answer to the gentleman's question is that this bill in no way would diminish the protection provided by law for census data.

Mr. BROWN of Ohio. I wonder if the gentleman would yield further so that I might receive the concurrence of the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. I agree with the remarks of the gentleman from Ohio and with the gentleman from Illinois.

Mr. DENNIS. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. I yield to the gentleman from Indiana.

Mr. DENNIS. I would like to make reference to the question of criminal records, publication of criminal records, which are generally exempted from the bill, as I understand it.

The gentleman said a moment ago that those records are the subject of pending special legislation, and obviously those

are very sensitive records and present a peculiar problem, and the subcommittee of the Committee on the Judiciary, chaired by the gentleman from California (Mr. EDWARDS) and of which the gentleman from California (Mr. WIGGINS) is the ranking minority member, has special legislation on that subject now before it. That subcommittee is tied up in a meeting today on a very important matter that the members of the subcommittee could not avoid, and hence they are not on the floor; and they have asked me to bring the matter up and express the strong hope that the House adopt no amendment that would impinge on that situation and would include criminal records in this bill.

Mr. ERLENBORN. Mr. Chairman, I yield such time as he may consume to the ranking member of the Committee on Government Operations, the gentleman from New York (Mr. HORROW).

Mr. HORTON. Mr. Chairman, I rise in support of H.R. 16373, the Privacy Act of 1974.

Having served as a member of the Special Subcommittee on Invasion of Privacy of the Committee on Government Operations some 10 years ago, I have a particular interest in the subject of personal privacy. During my 5 years of service on the Foreign Operations and Government Information Subcommittee I participated in several investigative hearings into this important area. Today, as ranking minority member of the Government Operations Committee, I am very happy to lend my strong support to a bill which insures that Federal Government agencies protect individuals' rights to privacy when dealing with information about people.

The bill does this in two ways:

First, it mandates that agencies disclose an individual's records to other persons or other agencies only with the written consent of that individual, unless the disclosure would be for a purpose which had been endorsed by the Congress or published in the Federal Register. Whenever the Government asks someone for information about himself, according to the bill, it would have to inform him of the disclosures which had been published as permissible.

Second, the bill provides that individuals shall have access to all Government records maintained about them, and shall have the right to petition agencies to correct any misstatements in those records. Agencies would have to make the changes requested or note on the records that the changes had sought, but that the Government disagreed with them.

All Federal records pertaining to individuals would be covered by these provisions, except for national security information, investigatory material compiled for law enforcement purposes, other criminal justice records, Secret Service and CIA files, and statistical data.

To make sure that Government agencies fulfill their responsibilities under this legislation, the bill permits individuals who are injured by Government agency's failure to comply with the law to bring suit against the agency in Federal court. A successful complainant

could be awarded actual damages and attorney's fees by the judge.

Mr. Chairman, this is landmark legislation in an area of concern to all Americans. I urge its enactment.

Mr. ERLBORN. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland (Mr. GUDE).

Mr. GUDE. Mr. Chairman, as a cosponsor of this legislation, I am indeed gratified that it is finally receiving the floor consideration which it should.

I want to commend the chairman of our subcommittee, the gentleman from Pennsylvania (Mr. MOORHEAD); the ranking member, the gentleman from Illinois (Mr. ERLBORN); and, in particular, the gentleman from California (Mr. GOLDWATER), the gentlewoman from New York (Ms. ABZUG), and the gentleman from New York (Mr. KOCH) who are also cosponsors of this legislation. They have been a driving force toward its consideration and in bringing it to the point where we find it at this moment.

The chairman of the subcommittee has very well outlined exactly what this legislation does. It is long overdue. This is the kind of attention that Government records have needed for some period of time. I think matters which we consider routine and perfunctory are very often hidden under agency directives, rules, and regulations, and we assume what is normal to us on the Hill to be what is normal throughout the Federal Government.

Increasingly, as the society and the Government have grown more complex, the maze of Federal activity and regulation have intensified, and the individual citizen has had to make increasing concessions to the imperatives of the Federal bureaucracy. The quantity of Federal paperwork alone, for example, has reached such proportions, that the House felt the need last month to authorize the establishment of a Commission on Paperwork to study the problem and find ways of reducing the burden which bureaucracy imposes on the citizen.

The level of regulatory activity which touches on the lives of individual citizens has also increased. Seat belt standards, now repealed, safety and health standards, labeling and advertising standards, while important Government tools to correct serious problems we have, all intrude on the freedom of the individual in some small way.

Certainly the demands of a complex technological society call for some concessions, but we have before us today an opportunity to help balance the recent trend of legislative activity by enacting legislation to help restore individual rights and individual privacy. This bill imposes limits on what the Government can do with individual data, and it imposes obligations on the Government to the subjects of the data, and in doing so it helps to maintain the balance of individual freedom and privacy which we all cherish.

Symbolic of this balance is the controversy over the use of social security

numbers for identification purposes. While such a proposal may make sound technological sense, to many citizens it implies removal of an important element of their privacy and individuality. This question is not dealt with in this bill, but some of the same principles are—the right of the individual to maintain his privacy and personal identity.

Beyond these questions of principle, the bill also has substantive significance for many citizens who feel, rightly or wrongly, that they have not received a "fair deal" from their Government.

Mr. Chairman, I would like to quote the experience which one veteran had in regard to the Veterans' Administration. He was unable to obtain compensation and relief for injuries he had received while serving his country abroad, and yet he was unable to look at his records in the Veterans' Administration files. He finally had to obtain legal counsel in order to get access to his files, and he found the reason the Veterans' Administration had denied his obvious need was because certain records that were in his file actually belonged to another veteran who had a similar name.

This may seem to be a very small thing, but this is the type of action which can occur in situations when we in Congress have not enacted regulations to provide for the overseeing of Federal records, which can sometimes be buried under a lot of bureaucratic redtape which denies the citizen the access to which he is entitled.

Mr. Chairman, I am going to offer two amendments to this bill at the appropriate time. They are amendments which I was unable to offer in the committee, because of the pressure of business when we were reporting the legislation to the floor. The first has to do with medical records.

This first amendment would clarify one item that I believe to be ambiguous in intent, in restricting the circumstances under which individuals would be granted disclosure by Federal agencies. It was the intention of the committee to exclude information which would be vital to the health or safety of an individual.

I believe that the current language in the bill is vague in this regard, in that it would permit such disclosures without prior permission, unless it is an emergency case. It does not make clear to whom the information would be disclosed.

The second amendment I would offer is one that would establish a Privacy Commission, which I believe is a vital necessity if the privacy legislation we are enacting is to become a meaningful statute. Clearly, the enactment and maintenance of successful privacy standards would hinge on the degree of cooperation provided by Federal agencies which have to implement the program.

The Privacy Commission which I will propose will coordinate and assist in these efforts, and it would be an important goal for gaining the necessary agency cooperation in order to make this legislation meaningful in the service of American citizens.

Mr. Chairman, I will offer these two amendments at the appropriate time.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. GUDE. I will be glad to yield to the chairman of the full committee.

Mr. HOLIFIELD. Does the gentleman's amendment of the privacy bill follow the words of the Senate provision?

Mr. GUDE. I have not compared them word for word, Mr. Chairman, but I believe it does.

I urge the passage of this legislation.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the gentleman from Arkansas (Mr. ALEXANDER), a member of the subcommittee.

Mr. ALEXANDER. Mr. Chairman, on June 19, following hearings on the Federal Government's use of telephone monitoring and lie detection devices conducted by the Subcommittee on Government Information, I stated that it appears our Government has been overcome by a snooping mania and it must find the medicine to cure this disease. H.R. 16373, the Privacy Act, is a good dose of such medicine.

I was alarmed to discover in hearings that it is literally possible to have every home in America bugged.

Mr. Chairman, I am convinced Americans do not want to be a part of one big party line. If present Government preoccupation with spying on its citizens continues, George Orwell's fictional fishbowl existence and "Big Brother" era in his book "1984" may very well occur.

H.R. 16373 provides basic safeguards for the individual to help remedy the misuse of personal information by the Federal Government, and reasserts the fundamental rights of personal privacy that are derived from the Constitution. At the same time, it recognizes the legitimate need of the Government to collect, store, use, and share among various agencies certain types of personal data, but under a framework of law to protect the citizen.

Like the Freedom of Information Act Amendments, H.R. 16373 also recognizes that certain areas of Federal records are of such a highly sensitive nature that they must be exempted from some of its provisions.

The Privacy Act provides for the exercise of civil remedies by individuals against the Federal Government through the courts to enforce their rights. Provision is made for the actual collection of damages by the individual against the Government if the infraction was willful, arbitrary, or capricious. Penalties are also provided for the unauthorized knowing and willful disclosure of identifiable material by a Government officer or employee by a fine of not more than \$5,000. Criminal penalties and fines would also be imposed on persons requesting or obtaining any such individually identifiable record under false pretenses.

The bill attempts to strike that delicate balance between two conflicting and fundamental needs—on the one hand, the need for a maximum degree of pri-

November 20, 1974

vacy and control over personal information the individual American furnishes his Government, and, on the other hand, the need for information about the individual which the Government finds necessary to carry out its legitimate functions.

Over 40 years ago, Supreme Court Justice Louis Brandeis, in his famous dissent in the case of *Olmsted* against United States, said:

Every unjustifiable intrusion by the government upon the privacy of the individual whatever the means employed, must be deemed a violation of the fourth amendment.

He further stated in terms relevant to current wholesale abuses of power that:

Experience should teach us to be most on guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasions to their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

Let us talk a moment on the concept of privacy. Privacy is the ability to be confident of security in our homes, persons, and papers. It is not only the bedrock of freedom. Privacy is the very essence of democracy. If we cannot speak or transact business without being snooped on by hordes of bureaucrats—we soon will not be able to speak or transact business without government permission.

In my opinion, events in recent years have brought about a chilling effect on the exercise of first amendment rights. It is now time for a defrosting. Every American must insist that government is the servant of the people—not our master.

In his first speech as Chief Executive, President Ford pledged his personal and official dedication to the individual right of privacy, in declaring that "there will be hot pursuit of tough laws to prevent illegal invasion of privacy in both government and private activities."

H.R. 16373 is a first step in that pursuit. I strongly urge my colleagues to support this legislation.

Mr. ERLÉNORN. Mr. Chairman, I yield such time as he may consume to the gentleman from Indiana (Mr. HUDNUT).

Mr. HUDNUT. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 16373, the Privacy Act of 1974. While there will be amendments offered to strengthen this bill, I feel the Committee on Government Operations has done a good job in bringing this legislation before us. There is a great need for statutory guidelines to protect the privacy of individuals by regulating the Federal Government's collection, maintenance, use, or dissemination of personal, identifiable information.

In this computer age, it is easy to obtain information about an individual and along with many others I am concerned over the extent to which citizens' privacy is being invaded. We see this in the accumulation of personal data in computer banks and other such means which constitute a threat to the privacy of every American citizen. There

are some who look upon individual tax returns as the greatest source of such information.

Earlier this year I cosponsored a bill (H.R. 10977) to provide further restrictions on accessibility to individual tax returns. The assurance provided the American people that information voluntarily given on tax returns will be carefully protected from disclosure and improper use is one of the basic concepts underlying this country's system of collecting taxes and I want to assure that protection. I am hopeful that the Ways and Means Committee will take specific action on that measure.

In the meantime, H.R. 16373 provides a series of basic safeguards for the individual to help remedy the misuse of personal information by the Federal Government and reassert the fundamental rights of personal privacy of all Americans that are derived from the Constitution of the United States. At the same time, it attempts to strike that delicate balance between the right of individuals for a maximum degree of privacy over the personal information he furnishes his Government and the need of the Government for information to carry out legislative functions.

Mr. ERLÉNORN. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. GOLDWATER).

Mr. GOLDWATER. Mr. Chairman, I thank the distinguished minority member on the subcommittee, the gentleman from Illinois (Mr. ERLÉNORN) for allowing me the privilege of speaking in favor of this particular legislation before us today, which has been long in coming and long overdue.

This particular piece of legislation is the result of a strong bipartisan effort in the House of Representatives. The efforts of my colleague, the gentleman from New York (Mr. KOCH) in behalf of an individual's right to privacy, are well known and were extremely important in the preparation of this legislation. Equally significant were the efforts of the members and the staff of the Subcommittee on Foreign Operation and Government Information of the Committee on Government Operations and, particularly, the subcommittee chairman, the gentleman from Pennsylvania (Mr. MOORHEAD) who was most diligent in pursuing this very difficult task, and who was assisted quite ably by the ranking Republican member, the gentleman from Illinois (Mr. ERLÉNORN). They are both to be commended for this excellent piece of legislation.

This legislation, as I said, has been long in coming, and is only here today because of the persistent efforts of not only members of the Committee on Government Operations, but also many Members of the House of Representatives, as well as Members of the other body, not to mention the private sector, educators, members of private organizations, and just plain people, and it certainly would be most fitting to mention the fine efforts by our President of the United States, Gerald R. Ford, and his Committee on the Right of Privacy.

Mr. Chairman, my concern for privacy is a long-standing one. The right to privacy is a derivative right. It is not specifically mentioned in the Constitution, as are the general rights of life, liberty, and the pursuit of happiness, nor is this subject mentioned in the Bill of Rights. But none of these would have had the content that we know them to have without the element of privacy being present. It is an essential, inherent element of our inalienable rights.

The concern for protecting personal privacy as it relates to personal information is fairly recent in its origin. The rapid growth of our population and the rise of massive urban centers, the advent of modern communication and electronic technology, and the rise of the computer, have brought a basic change in our society. Massive amounts of personal information can be conveniently and economically collected, stored, and used. The individual is no longer directly involved in the modern personal information transaction process. Many information practices have been developed and adopted because they were convenient, technologically feasible, and cost-effective. The individual actually became an impediment in these new processes. As he began to protest his exclusion and try to protect himself from the injury and damage that occasionally resulted, he found he had no legal rights to fall back on.

Mr. Chairman, the Federal Government has a relentless appetite for information. There seems to be a direct correlation between the continued growth of Government and the continued growth of privacy invasion.

The Federal Government, as we enact more and more programs, has a need to collect more and more information in order to administer these programs. So it is with this piece of legislation that we are trying to strike a balance between the need to know in order to successfully and correctly administer Government programs; and the rights of an individual to be left alone, to control his own personal life. This particular bill undertakes to redress this disastrous imbalance.

The Federal Government is required to permit an individual to know what records it has pertaining to him. It introduces the element of active consent as a requirement before information that is collected for one purpose can be put to a new use. It permits an individual to have copies of files about him and to correct or amend erroneous portions of them.

Finally, it requires the Government to keep records accurately and securely in accordance with specific, published regulations.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ERLÉNORN. Mr. Chairman, I yield 2 additional minutes to the gentleman from California.

Mr. GOLDWATER. It is noteworthy, Mr. Chairman, that this Privacy Act of 1974 prohibits the Federal Government

from maintaining secret personal information systems. This bill is an important major first step in the restoration of the individual's right to privacy, and I would caution and suggest to my colleagues that as we pursue further legislation in other areas, we constantly be vigilant that we do not undermine this effort today, that we take into consideration in new legislation, enabling legislation, the rights of the individual to his privacy. It is time that we insert human rights into the programs and the programmers. It is time that we insert privacy rights into the policy of our agencies. It is time that we instill a spirit of concern for our liberties. We must reestablish—and I think we do so with this legislation—the right to be left alone for the people of this country.

Mr. Chairman, I urge my colleagues to support this legislation.

Mr. SYMMS. Mr. Chairman, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from Idaho.

Mr. SYMMS. I thank the gentleman for yielding.

Mr. Chairman, I wish to associate myself with the remarks of the gentleman from California (Mr. GOLDWATER).

I should like to commend the gentleman from California for his efforts that he has made on behalf of this Privacy Act which we have here before the House today. I would say to the gentleman in the well I thank him for his support, effort, and leadership on it and hope that it is successful today, as this Privacy Act offers some protection for people from big brother government snooper-vision.

Mr. GOLDWATER. I thank the gentleman and commend him also for his support and active participation on the Republican Task Force on Privacy, which issued what I considered a very comprehensive report and bibliography this past year.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ERLÉNBOEN. Mr. Chairman, I yield such time as he may require to the gentleman from California (Mr. ROUSSELOT).

Mr. ROUSSELOT. Mr. Chairman, I want to commend my colleague, the gentleman from California (Mr. GOLDWATER) for the effort he has put forward on this issue, and our subcommittee chairman for his work on this issue.

Mr. Chairman, as one of the original cosponsors in this Congress of right to privacy legislation, I rise in support of H.R. 16373, the Privacy Act of 1974.

This is a comprehensive bill which is intended to protect the privacy rights of individuals by regulating the Federal Government's collection, maintenance, use, or dissemination of personal, identifiable information.

Through my committee assignments on Banking and Currency, and Post Office and Civil Service, I have become particularly aware of the need for the protection of an individual's privacy rights with regards to bank records and

census data. Very strict care must be taken to protect the confidentiality of these records and insure that the information is used only for proper purposes. Since the census questions have become more detailed and extensive, the dissemination by the Census Bureau of statistical data must be more closely regulated in order to protect the individual from being identified by that data. H.R. 16373 does provide proper safeguards in this area.

Mr. Chairman, I have sponsored legislation, H.R. 10021, the Right to Financial Privacy Act. My bill would protect the constitutional rights of citizens by prescribing procedures and standards governing the disclosure of financial information by financial institutions to Federal officials or agencies. The bill we are discussing here on the floor today does not regulate the collection of information by the Federal Government other than to prohibit any agency from maintaining any record concerning the political or religious belief or activity of any individual unless expressly authorized by statute or the individual himself. I realize that by the very nature of the subcommittee's—the Foreign Operations and Government Information Subcommittee of the House Government Operations Committee—jurisdiction it could not get into this area of regulating the activities of the Federal Government specifically with regards to obtaining individual bank records, so I hope that our concern about privacy rights will not stop with the passage of this one bill, H.R. 16373.

I urge support of H.R. 16373 with the hope that in the next Congress, we will give further attention to areas that need to be specifically considered in order to afford our citizens full protection from the violation of their privacy rights by the Federal Government. Of these areas, one of the most important is, I believe, the legislation which I have sponsored to preserve the confidential relationship between financial institutions and their customers and the constitutional rights of these customers.

Mr. ERLÉNBOEN. Mr. Chairman, I yield such time as he may require to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Chairman, I rise today in enthusiastic support of H.R. 16373. The Privacy Act of 1974. In this bill we are regulating the collection, maintenance, and use of by Federal agencies of information concerning American citizens.

I hope this bill will be the first of a wave of privacy oriented legislation which the Congress will consider in the next few years. Therefore, we must be very careful in laying a foundation for future reforms. Other areas which clearly need attention are the protection of constitutional freedoms for Federal employees, limitations upon distribution of federally collected information, and strict regulations upon the types and use of surveillance tactics employed by Federal agencies. Beyond our limited Federal perspective, we must also seriously ex-

amine the activities of private information and collection services.

Since I entered this body in the 92d Congress I have proposed over a dozen bills relating to questions of individual and financial privacy and domestic intelligence. Along with most Members, I am committed to guaranteeing the rights implicit in the 1st, 4th, and 14th amendments. This bill, H.R. 16373, is a good start.

I urge that we pass this bill, with the inclusion of a Federal Privacy Commission and some changes in the civil procedure and criminal penalties sections. It is only a start, but it will be a good base for future laws to protect the personal privacy of all Americans.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, at this time I yield 5 minutes to the gentleman from Missouri (Mr. ICHORD).

Mr. ICHORD. Mr. Chairman, as its title—the Privacy Act of 1974—and the prefatory findings indicate, it is the commendable purpose of the measure to protect the individual against the misuse of official information. To that end the act would add a new section to what is now commonly known as the Freedom of Information Act (5 U.S.C. 552). The new section, to be designated section 552a, would impose conditions upon the disclosure of official information, and would give individuals affected access to such information so as to permit them to review and, if necessary, to correct the record.

The committee which reported the measure and the gentleman from Pennsylvania (Mr. MOORHEAD) who chaired the subcommittee which had the measure under consideration, are to be commended for the professional manner in which they have sought to deal with this extremely complex and difficult subject.

The "right" of privacy has been said to be the right of the individual "to be left alone." It is without doubt a right inherent in our libertarian system. While it is said that this right is not explicitly asserted in our Constitution, it does however find expression in certain related provisions and in the basic philosophy which prompted the adoption of the Constitution itself. By that instrument those freedoms and liberties were reserved to the individual which were not deemed essential to the coexistence of man in society. Hence, like other rights, the right of privacy is not deemed an absolute right.

Logically, the absolute right of privacy could be fully asserted only in a state of anarchy. But even in such a state, if extended to its outer and extreme limits, the exercise of any such absolute right must necessarily collide with the rights of other individuals. The resulting conflict would consequently result in the destruction of the rights asserted by each. It necessarily follows that if the right of privacy is to be recognized as a legitimate claim in an ordered society, it must be subject to limitations and must be conditioned upon the rights of others and exercised consistently also with the rights of the public.

What we are dealing with in statutes of this type is thus necessarily a balancing process by which we seek to resolve the right of the individual to be left alone with the public and other individual rights "to know." For it is a fact that such latter rights are equally recognized by the Constitution, although in a sense they may collide with the individual's "right of privacy." The first amendment rights of freedom of speech and of the press, for example, intrude upon an individual's right of privacy, but they are rights which are essential to the administration of Government and to the free functioning of our libertarian and democratic institutions. Moreover, the individual's right to privacy must be conditioned by that which is consistent with the continued existence and protection of that Nation and its constitutional system upon which the vitality of the right itself must ultimately depend.

It appears to me that the bill before us has generally resolved the conflict between the rights of the individual and the public and other private rights with considerable success. I propose today to offer only two amendments to the bill which are directed toward clarifying certain aspects of the measure's impact upon our intelligence services, particularly in relation to the acquisition and use of information which is essential to the maintenance of the national and internal security. On their adoption I shall support this measure.

First, however, I should like to express my concern over an ambiguity inherent in the provisions of the proposed subsection (b), at page 22, line 10, relating to conditions of disclosure. This subsection would, subject to the exceptions therein set forth, generally prohibit an agency from disclosing to any person information about an individual without the individual's prior written consent. The subsection would generally authorize only interagency and intra-agency disclosures for authorized law enforcement activities, but do not appear to contain any explicit provisions authorizing certain essential disclosures outside official agencies which would be clearly required if certain vital security programs maintained by the Government are to be effectively carried out. These include, for example, the effective maintenance of the industrial security, industrial defense, atomic energy, and port and vessel security programs. Defense contractors and others involved in the receipt of classified information and related information about individuals are mainly private employers.

I am informed, however, that the provision of subsection (b) (2) which would except from the prohibition the communication of information therein described as "for a routine use," is intended by the sponsors of the legislation to permit such essential disclosures beyond the bounds of the particular agencies involved. If this is effectively accomplished by the language of this exception, it may well be that a specific clarifying amendment is unnecessary on this aspect of the bill. It is my hope that any such ambiguity as may exist on the

reach and meaning of this provision, can be obviated in colloquy with the sponsors of the measure at the appropriate time.

On the other hand, I deem it necessary to offer a specific clarifying amendment to the provisions of subsection (e), paragraph 4. This section commences at page 26, line 18, of the bill. The particular paragraph of this subsection to which the amendment will be offered is at page 28, line 13. This subsection and paragraph prohibits an agency from maintaining any record, and I quote, "concerning the political or religious belief or activity of my individual, unless expressly authorized by statute or by the individual about whom the record is maintained." We may well recognize that the purpose of this provision is commendable and legitimate in prohibiting the disclosure of records with respect to conventional political and religious beliefs and activities. However, in its present form it is clear that the provisions can be construed to cover activities which are properly within the scope of legitimate law enforcement. I am assured that the authors of this measure have not intended the provisions to foreclose this proper purpose.

The terms of the broad prohibitions on maintenance of records relating to "political" and "religious" activities would, for example, embrace the activities of the Communist Party and similar groups, which, although generally recognized as conspiratorial or clandestine, are nevertheless commonly described as "political." Similarly, certain sects within the Black Muslim movement, which have been described by the Director of the FBI as endangering the internal security, may claim protection under this clause as a "religious" activity.

Although those records of political or religious activity which are "expressly authorized by statute," are excepted from the prohibitions of this paragraph, this is not adequate to exempt the activities of such subversive groups as I have indicated. I know of no existing or enforceable statute which expressly and generally authorizes any particular agency to maintain the records of political or religious activities of subversive groups. I would therefore amend this paragraph by striking out the period after the word "maintained" and add the following:

"; provided, however, that the provisions of this paragraph shall not be deemed to prohibit the maintenance of any record of activity which is pertinent to and within the scope of a duly authorized law enforcement activity."

I believe this clarifying amendment would obviate any ambiguities as to the reach of the prohibition, and would serve to eliminate any adverse litigation on the subject.

The second and final amendment, which I propose to offer to the measure, would affect the provisions of paragraph (2) of subsection (k), at page 34, line 7. This section deals with certain specific exemptions that may be made to the disclosure requirements of the act, particularly with respect to those investigatory files or material which the Act would otherwise require the agencies to

disclose to an individual by the provisions of subsection (d). While the provisions of paragraph (2) of subsection (k) would permit the agency to exempt from the mandatory disclosure requirements of subsection (d) investigatory material compiled for law enforcement purposes to the extent it is not now open to public inspection under the provisions of existing law, that is, section 552(b) (7) of title 5, United States Code, it would appear to me that under this paragraph there is a question whether the agency could exempt from public disclosure the identity of individuals and information pertaining to those, for example, who are members of such organizations as the Communist Party and other revolutionary groups having similar objectives.

In view of the fact that there are literally tens of thousands of individuals who are involved in such revolutionary organizations, to require such agencies of the Government as the FBI and the defense intelligence agencies to disclose investigatory material pertaining to such individuals on request, would not only have the effect of literally immobilizing the agencies in the effective execution of their essential and vital work, but would greatly impair, if not destroy, their functioning. The research which would be involved, the extensive correspondence required, and the litigation which would likely ensue as a result of the thousands of requests that would conceivably and very likely pour into the agencies would wreck havoc upon the agencies. Moreover, to permit the indiscriminate raiding of investigatory files, the maintenance of which in confidence is so essential to the protection of the national and internal security, would also destroy their usefulness by revealing the extent of coverage and the method and adequacy of operation of our intelligence forces. Any such result is wholly unnecessary to the attainment of the objectives and purposes of the bill. I would thus amend paragraph (2) of subsection (f) by striking the paragraph in its present form and amend it to read as follows:

On page 34, strike lines 7 through 11 and insert the following in lieu thereof:

"(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section; provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

Thus by its terms the amendment would fully protect the individual by requiring the disclosure to him of relevant investigatory material in the system of records—other than that within the scope of subsection (j) (2)—when, as a result of the maintenance of such material, he is denied any right, privilege,

or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible. In such event disclosure is limited to the extent necessary to protect the identity of a source who furnished information to the Government under a promise that the identity of the source would be held in confidence.

This amendment very properly serves the purpose of protecting the investigatory material from being raided by the thousands and perhaps tens of thousands of persons who may seek to do so for no legitimate or excusable purpose.

Hence the right of privacy of the individual is protected, without diminution, to the extent of his legitimate requirements. It shall be recognized that the amendment does not affect the requirements of subsection (b) of the bill, which prohibits disclosure of information beyond the legitimate uses of the Federal agencies maintaining them. Thus the privacy of the individual remains protected by the amendment consistently with the attainment of the purposes of the bill and the national security interest.

There is one final point to which I should direct attention, regarding both the wording of this and my prior amendment, in the use of the term "law enforcement" as applied in the context of these amendments and the bill as a whole. In referring to a "law enforcement activity" and "law enforcement purposes," I am, of course, using the expression "law enforcement" in its general meaning and in the broadest reach of the term. I include within that term those purposes and activities which are authorized by the Constitution, or by statute, or by the rules and regulations and the executive orders issued pursuant thereto. Thus the investigatory material maintained shall include, but not be limited to, that which is compiled or acquired by any Federal agency in connection with and for the purpose of determining initial or continuing eligibility or qualification for Federal employment, military service, Federal contracts, or access to classified information.

I want to emphasize—so that there is no misunderstanding—these changes are designed to protect only legitimate national or internal security intelligence and investigations, and no records or files shall be kept on persons which are not within constitutional limitations. Let the legislative history be explicit. None of these changes are intended to abridge the exercise of first amendment rights. The rights of Americans to dissent in a lawful manner and for lawful purposes must be preserved.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, we did discuss these two questions, I will say to the gentleman from Missouri, and we did say it was our understanding that under the gentleman's amendments no file would be kept of persons who are merely exercising their constitutional rights, as the gentleman stated.

Mr. ICHORD. The gentleman is exactly correct.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. KOCH), who has been so very active in the privacy of information field.

Mr. KOCH. Mr. Chairman, first I want to thank the distinguished gentleman from Pennsylvania, my good friend (Mr. MOORHEAD), who is responsible for so much of the language incorporated into this bill and for the efforts necessary to bring it to the floor.

I just want to take special note of what he has done on behalf of privacy as well as take note of the enormous efforts on the Democratic side by the gentlewoman from New York (Ms. ABzug) and on the Republican side by the gentleman from Illinois (Mr. ERLBORN) and the gentleman from New York (Mr. HORTON).

Rather than restate the provisions of the bill which have been so amply set forth by a number of the speakers, I would rather simply comment on the fact that this kind of legislation which relates to the privacy of the individual, protecting that individual from Government, has the support of those who are conservatives and those who are liberals.

They have indicated that support by rising in the well this very afternoon, on both sides of the political spectrum and both sides of the aisle.

That is not to say that this bill is a perfect bill. I do not know of any perfect legislation. It may be there have been occasions when there has been legislation never requiring an amendment of any kind brought to this floor and passed, but I am not aware of it.

This bill, however, is a very good bill. There are amendments that will be offered, some that I support, some that I oppose; but the thrust of most of those amendments and the nature of those amendments is intended by those offering them to improve the bill. We may disagree on whether they do or do not; but the persons involved in most of the amendments want to protect privacy and that is key and very important to understand when we discuss those particular amendments.

There is an area that ought to be covered which is not by this bill. If I had my way, I certainly would have it in the bill; that area relates to law enforcement agencies which are, frankly, not covered adequately under this bill. The reason for that is that the Committee on the Judiciary has before it legislation which relates to the criminal data banks of law enforcement agencies. I know that that great committee with its distinguished chairman (Mr. ROBINO) and the subcommittee chairman in charge of that subject, the gentleman from California (Mr. EDWARDS) are very concerned about the rights of privacy. So I have no doubt that the legislation which I am informed they intend to bring to the floor, hopefully early in the next session, will cover that data not covered under this legislation, pertaining to law enforcement agencies.

What this legislation does do is open the Federal files in so many areas. Millions of files that are now not available to the public would become available to

the public. I am not saying available to the public in terms of seeing somebody else's file, but seeing one's own file, seeing whether the material in there is relevant, seeing whether it is accurate, seeing whether it is current, and if it is not, providing the mechanism whereby that can be corrected.

This is landmark legislation. This is legislation in which I take great pride having espoused it in February of 1969, and later with my good friend, the gentleman from California, Mr. BARRY GOLDWATER. In my own district we refer to the legislation as the Koch-Goldwater bill, and in his district as the Goldwater-Koch bill; but the fact is that while the initial legislation was ours, it has been subjected to extensive review and amendment by the committee and improved upon in a number of ways. This legislation is now the joint work product of many people. I am proud to be one of those who brought this legislation to this point, where its passage seems assured.

Again, I want to express my deep appreciation to the chairman, Mr. MOORHEAD, the members of the committee, its brilliant staff without whose hard work we would not be here tonight, and to my partner on this legislation, BARRY GOLDWATER, JR.

Mr. BIAGGI. Mr. Chairman, I rise in strong support of this legislation. I feel that passage of this bill today will represent a significant victory in the battle against unlawful and dangerous intervention by the Federal Government in the private lives of the average American citizen.

While the fourth amendment to our Constitution clearly spells out the right of the individuals to privacy in recent years, the Federal Government has intensified their efforts to superimpose themselves into the lives of the individual. Many people pointed to these dangerous actions by the Government as the fulfillment of the Orwellian theory of "Big Brother" as contained in his masterpiece, 1984.

What we are considering today is comprehensive legislation which will take a number of steps to protect the individual from the power of the Federal Government. Perhaps the strongest area of controversy concerns the maintaining of nonessential records by Government agencies against individuals. This legislation addresses itself decisively to this problem in the following ways:

It permits an individual to be aware of and have access to all personal information records compiled by Government agencies, except in cases where these records are needed for law enforcement and national security.

It allows the individual to control the transfer of personal information records from one Government agency to another.

It further specifies the extent of records which can be maintained by the Federal Government, and specifically prohibits keeping of records which contain a person's political and religious beliefs unless clearly provided for by law.

Finally, this legislation sets a new and important precedent by allowing for a civil remedy to be acquired by individuals in instances when they have been denied access to their records or whose records have been kept or used in violation of the provisions of this law. The individual will have the right to bring suit as well as the ability to collect damages if it can be established that such actions were taken capriciously by the Government.

I feel a sense of personal relief in the realization that the Congress has seized the initiative in this area. Many of us sitting here today have been the target of unlawful Government intervention in our personal activities. I feel that the recent abuses of power disclosed in the Watergate hearings may have provided a special impetus for the development of this legislation. One only has to read these hearing to discover the extent to which certain Government agencies either were manipulated or on their own, took steps to discredit those individuals they view with suspicion or fear.

On the same token I am pleased to see that certain conditions were contained in this bill. As a former law enforcement officer, I know the value of maintaining information about potential or actually dangerous groups. There are dangerous and anarchistic elements in this society which merit the close attention of law enforcement personnel and I applaud the fact that we are not tying the hands of law enforcement as they work to uphold the law of the land.

Mr. Chairman, the legislation we are considering today is both necessary and vital to the American people. We are a free nation and the strength of our Nation derives from the rights of the individual to freedom and privacy. Many Americans have become justifiably alarmed in recent years by the increased activities of the Federal Government in the area of maintaining personal records and information. We are today striking a blow against the potential of tyranny in this Nation and I am pleased to rise in support of this bill which can only enhance and strengthen the bonds of freedom which exist in this Nation.

Mr. REGULA. Mr. Chairman, I rise in support of H.R. 16373, the Privacy Act of 1974.

In April of this year I joined with my colleagues Messrs. GOLDWATER and KOCH in participating in a special order to discuss the need for the establishment of a national privacy policy. A singular point or theme emerged from that discussion: one of the basic tenants of our system of law is the right to confront a witness or an accuser and to cross-examine him in order to elicit the truth.

In recent years computers, photocopyers, and other technological advances have made the storage and retrieval of information about citizens fast and relatively inexpensive. Almost without notice and in the name of efficiency our technological progress has moved us toward the "big brother" supervision predicted in George Orwell's book "1984."

Today, an individual does not really know who has information about him, or how many agencies or corporations are using it or for what purposes. There

is no mechanism for providing explanations or to add mitigating facts. And, even more important there are no limits on what can be collected either by Government or the private sector.

Information is collected on academic achievement, credit ratings, health, judicial records, employment history, birth and marriage records, military records, tax returns and census records, to name a few.

The written word, film, or computer punch card bears witness as eloquently as the spoken word. The right of access to and challenge of records by the subject of the information obtained in those records could, if exercised under the same or similar rules, only instill confidence in our governmental process.

This bill, H.R. 16373, would provide the Government with the tools it needs to regulate, collect, maintain, use, and disseminate personal, identifiable information. It would provide individuals with the safeguards they need to prevent misuse of this information.

Like the Freedom of Information Act, which I am sure this Congress will pass in one form or another, this bill is a significant step toward open government.

I urge my colleagues' support for passage of this bill.

Mr. BROYHILL of North Carolina. Mr. Chairman, I strongly support the passage of H.R. 16373, the Right to Privacy Act. Earlier this year, I cosponsored H.R. 15524, a forerunner of this legislation.

I feel, as do many Members of Congress, that there is a growing capacity for major violations of the privacy of Americans, as the Federal Government increases its collection and use of data furnished by citizens for specific governmental purposes. Safeguards are needed to insure that the personal information obtained by the Government, for legitimate purposes, is not misused. Recently, we have witnessed flagrant violations of the constitutional rights of some of our citizens by the Federal Government. We should enact legislation now to insure that these individual rights are never again violated.

While there can be no absolute protection of privacy in any society, I believe H.R. 16373 provides the necessary safeguards for greater protection of private records. Perhaps the greatest protection afforded the individual is his right to have access to his records, and to control the transfer of any personal data from one Federal agency to another for non-routine purposes. Additionally, the bill will require the disclosure by every Federal agency of certain identifying characteristics about virtually all systems of records under their control, to insure that no "secret" Government system of records is created.

H.R. 16373 would also permit individuals access to civil court action against the Federal Government should their rights be violated. Provision is made for the awarding of actual damages to an individual, if the Government is shown to have acted willfully, arbitrarily, or capriciously in violating the provisions of this act. Criminal and civil penalties could be levied against individuals who disseminate or seek to obtain personal information contained in Federal files.

Mr. Chairman, it is essential that the Federal Government, the largest repository of personal records in the country, do everything possible to safeguard these files and to protect the rights of every American citizen. H.R. 16373 contains these safeguards and protections. I will support this measure and I urge my colleagues to do likewise.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the committee amendment in the nature of a substitute printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 16373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful, arbitrary or capricious action which violates any individual's rights under this Act.

SEC. 3. Title 5, United States Code, is

amended by adding after section 552 the following new section:

"§ 552a. Records maintained on individuals

"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any collection or grouping of information about an individual that is maintained by an agency and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

"(6) the term 'statistical research or reporting record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) for a routine use described in any rule promulgated under subsection (e) (2) (D) of this section;

"(3) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(4) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(5) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(6) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(7) pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon the disclosure notification is transmitted to the last known address of the individual; or

"(8) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee.

"(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control shall—

"(1) except for disclosures made under subsection (b) (1) of this section or disclo-

tures to the public from records which by law or regulation are open to public inspection or copying, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (6) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency within two years preceding the making of the correction of the record of the individual, except that this paragraph shall not apply to any record that was disclosed prior to the effective date of this section or for which no accounting of the disclosure is required.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him to review the record and have a copy made of all or any portion thereof in a form comprehensible to him;

"(2) permit the individual to request amendment of a record pertaining to him and either—

"(A) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(B) promptly inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the agency of that refusal, and the name and business address of the official within the agency to whom the request for review may be taken;

"(3) permit any individual who disagrees with the refusal of the agency to amend his record to request review of the refusal by the official named in accordance with paragraph (2) (B) of this subsection; and if, after the review, that official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency; and

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and, upon request, provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) which Federal statute or regulation, if any, requires disclosure of the information;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) other purposes for which the information may be used, as published pursuant to paragraph (2) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(2) publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine purpose for which the records contained in the system are used or intended to be used, including the categories of users of the records for each such purpose;

"(E) the policies and practices of the agency regarding storage, retrievability, access, controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him; and

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content;

"(3) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and

"(4) maintain no record concerning the political or religious belief or activity of any individual, unless expressly authorized by statute or by the individual about whom the record is maintained.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means the head of the agency may deem necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency (A) refuses to comply with an individual request under subsection (d) (1) of this section, (B) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of records and consequently a determination is made which is adverse to the individual, or (C) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (j) or (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) In any suit brought under the provisions of subsection (g) (1) (B) or (C) of this section in which the court determines that the agency acted in a manner which was willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(4) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—Any officer or employee of the United States, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not

entitled to receive it, shall be fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the agency from any part of this section except subsections (b) and (e) (2) (A) through (F) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (2) (G) and (H), and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552(b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, except to the extent that the material is within the scope of subsection (j) (2) of this section or is open to public inspection under the provisions of section 552(b) (7) of this title;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18; or

"(4) required by statute to be maintained and used solely as statistical research or reporting records.

"(l) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section.

"(3) Each agency record pertaining to an identifiable individual which is transferred

to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be subject to all provisions of this section except subsections (c) (4); (d) (2), (3), and (4); (e) (1), (2) (H) and (3); (f) (4); (g) (1) (B) and (C), and (3).

"(m) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section."

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

Immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

Sec. 5. The amendments made by this Act shall become effective on the one hundred and eightieth day following the date of enactment of this Act.

Mr. MOORHEAD of Pennsylvania (during the reading). Mr. Chairman ask unanimous consent that the considered as read, printed in the ORD, and open to amendment a point.

The CHAIRMAN. Is there objection to the request of the gentleman Pennsylvania?

There was no objection.

AMENDMENTS OFFERED BY MR. MOORHEAD OF PENNSYLVANIA

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I offer two amendments, and I ask unanimous consent that my amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. MOORHEAD of Pennsylvania: Page 22, lines 19 and 20, strike out "in any rule promulgated".

Page 27, line 8, immediately after "(2)" insert "subject to the provisions of paragraph (5) of this subsection."

Page 28, line 12, strike out "and"; on line 16, strike out the period and insert in lieu thereof "; and "; and immediately after line 16, insert the following new paragraph:

(5) at least 30 days prior to publication of information under paragraph (2) (D) of this subsection publish in the Federal Register notice of the use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

Mr. MOORHEAD of Pennsylvania (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendments be dispensed with. They have been distributed to the minority side, and I do not think further reading of the amendments is necessary.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, this amendment has also been discussed in advance with the minority side. Its purpose is to tighten up the part of the bill under which a Federal agency makes its determination as to the "routine" purpose for which records contained in a system of records are to be used or intended to be used. As I explained in earlier remarks, "routine" uses of personally identifiable information permit an agency to transfer such records without obtaining the individual's consent—within the agency or between agencies—in the "routine" conduct of Government business.

It is essential, however, that this "routine" authority is not abused so as to circumvent the basic purposes of this law. Under the present language of the bill, an agency—under subsection (e)—may publish in the Federal Register a list of each "routine purpose" for which records in an information system are used. The danger is that there is no check on the agency—except congressional oversight—as to what might be called a "routine purpose." A bureaucrat might be tempted to include a "nonroutine" use in the definition of "routine" and subvert the safeguards set up for individual privacy in this bill.

Therefore, the purpose of these amendments is to subject the agency determination to public scrutiny by providing 30 days for interested parties to submit to the agency after publication in the Federal Register written data, views, or arguments as to its interpretation of "routine purpose." I believe that this amendment strengthens the bill against potential bureaucratic abuses and urge that it be adopted.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yielding to me. I want to say that the gentleman from Pennsylvania has furnished me with a copy of the amendments, and I support the amendments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The amendments were agreed to.

AMENDMENT OFFERED BY MR. MOORHEAD OF PENNSYLVANIA

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I offer a technical amendment.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of Pennsylvania: On page 33, line 2, after "(F)" insert "and (I)".

On page 30, line 24, strike "(J)" or.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I will be brief in explaining this amendment, which has been previously discussed with the minority side. Very simply, it tightens up a part of the bill where a loophole might exist. It provides that if the head of an agency utilizes the authority under subsection (j) of the bill to exempt a system of records from this law, such action shall not exempt the particular agency from

safeguards to the public against abuse of such exemption authority as provided in subsection (1), imposing criminal penalties for violations of the act.

I trust that the amendment will be adopted.

Mr. ERLENBORN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Illinois.

Mr. ERLENBORN. Mr. Chairman, I thank the gentleman for yielding to me. I do support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ERLENBORN

Mr. ERLENBORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ERLENBORN: On page 34, in line 14, strike out the word "or";

In line 16, strike out the period and insert in its place a semi-colon; and

After line 16, insert the following:

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence."

Mr. ERLENBORN (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment be printed in the Record at this point.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ERLENBORN. Mr. Chairman, a copy of this amendment has been furnished to the majority, and since the amendment has not been read, I would like to briefly describe its three purposes. This adds in the specific exemption, subsection (k) (3) exemptions not found in the bill.

The first is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, or

access to classified information, but only to the extent that the disclosure of such material would reveal the identity of the source that was a confidential source, promised confidentiality.

As I said during the general debate, the Washington Post this morning, in an editorial, incorrectly described this as closing the files entirely. The files will be open. The individual will have access to the files and to the information contained therein. But we will protect the confidentiality of statements that have been given in the past on a promise of confidentiality, express or implied, and will protect in the future the confidentiality of statements that were given by someone with an express promise of confidentiality.

The second part of the amendment will exempt testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

This amendment has been requested by the Civil Service Commission. Under the bill, without this exemption, each test that is given—and there are hundreds of such tests that have been prepared by the Civil Service Commission—would be available to any individual who took the test—the questions and the answers. That test then would be compromised and could never be used again. The Civil Service Commission would have to prepare a whole new test the next time a test in that area was given. This would be an unnecessary expense without enhancing the privacy of any individual. I think this portion of the amendment is certainly warranted.

Lastly, my amendment provides a specific exemption for evaluation material used to determine potential for promotion in the Armed Services, but again, only to the extent that it is necessary to protect a confidential source.

As to the first and third portions of this amendment, the protection of confidential sources, I think it is very interesting that the House today overrode a veto of amendments to the Freedom of Information Act, and that Freedom of Information Act gets into the same area of information.

Listen to the report of the conference committee relative to the Freedom of Information Act. It says:

In every case where the investigatory records sought were compiled for law enforcement purposes, either civil or criminal in nature, the agencies can withhold the names, addresses and other information that would reveal the identity of a confidential source who furnished the information.

So there, in that act, we saw the need to protect the confidential source. I think we should do likewise in this act.

Mr. Chairman, the President on October 9th issued a statement endorsing the legislation before us. He had in that statement, however, one reservation. He said:

H.R. 16373, the Privacy Act of 1974, has my enthusiastic support except for the provisions which will allow unlimited individ-

ual access to records vital to determining eligibility and promotion in the Federal service and access to classified information.

I strongly urge a floor amendment permitting workable exemptions to accommodate these situations. This is the amendment that will meet the President's concern, and I think it is a valid concern.

There is one last observation that I would like to make. I have here a copy of the decision in the case of Koch against the Department of Justice. It is a decision of the District Court of the District of Columbia, which is considered one of the more liberal courts, and the judge was Judge Gerhard Gesell, who is considered one of the more liberal judges.

I would like to read just one or two excerpts from the decision.

The judge says:

Background files on Congressman Bingham which were compiled during investigations into his eligibility for certain high Government posts. Such employment checks are routine, fully authorized, and essential to the maintenance of integrity in government service.

The court later in another part says as follows:

Plaintiffs' narrower interpretation of that exemption is unjustified, since it would require disclosure of highly confidential information supplied to Bureau investigators. In order to insure such confidentiality, FBI files may be withheld if law enforcement was a significant aspect of the investigation.

The judge goes on further to say:

This is true even if the laws being enforced were regulatory rather than criminal in nature.

Then the judge later says:

Even inactive investigatory files may have to be kept confidential in order to convince citizens that they may safely confide in law enforcement officials.

Mr. Chairman, unless we adopt this amendment, confidential statements given to investigators in the past will be made available to the persons about whom the investigations are being made.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLBORN) has expired.

(By unanimous consent, Mr. ERLBORN was allowed to proceed for 2 additional minutes.)

Mr. ERLBORN. Mr. Chairman, there are literally hundreds of thousands of people across this country, many Members of Congress included, who in the past have given confidential statements relative to people who are being considered for high Government posts. These confidential statements will be opened up to the individual who is being investigated if the bill passes without amendment—and, I think equally important, in the future we would not be able to conduct meaningful investigations into such matters as the appointment of a Vice President and the appointment of members of the courts, including the Supreme Court, District Courts, and so forth, unless we have limited ability to promise confidentiality where it is necessary to get candid information concerning individuals.

Mr. Chairman, I hope that my amendment will be supported.

Mr. SMITH of New York. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield briefly to the gentleman from New York.

Mr. SMITH of New York. Mr. Chairman, do I understand that the gentleman's amendment would open the files, as far as the background statements themselves are concerned, as long as the identity of the person making those statements was preserved?

Mr. ERLBORN. Mr. Chairman, I thank the gentleman for his question. The gentleman is exactly right.

The information, derogatory or otherwise, will be made available to the individual. The only portion that will be kept confidential is the name of the one who has given the information in confidence, or such information as might lead to his identity.

Mr. SMITH of New York. I thank the gentleman.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from California.

Mr. HOLIFIELD. Mr. Chairman, I would like, of course, to say, not being a lawyer, that I find myself at somewhat of a disadvantage, with the very complexity of this bill.

I recognize the laudable purpose of it. I do intend to vote for the bill. In committee I did vote with the gentleman for this amendment, or one very close to it. There seems to be a difference of opinion as to whether this is the exact amendment or not. I expect to vote for it at this time.

I think that if we do reveal the sources of confidential information, after we have or an agency has obtained the information under the promise of protecting the source, it would imperil the access to information which we should have.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. ERLBORN) has expired.

(On request of Mr. HOLIFIELD and by unanimous consent, Mr. ERLBORN was allowed to proceed for 2 additional minutes.)

Mr. HOLIFIELD. Mr. Chairman, I also believe that there might be a great danger, both to the Government and to the individual involved who gave that information, if the source was revealed.

Therefore, I find myself in general agreement with this amendment. I voted for the amendment in committee, although we lost it in committee, as the gentleman remembers. It does seem to me that it is a protective amendment.

We are skating on thin ice, between freedom of information and privacy of information, and I think the extra care that this would give or the extra protection it would give to sources that might be vital to the Government in many fields is worthy of consideration.

Mr. Chairman, I would hope that the chairman of the subcommittee, unless there is a very strong reason, which he will undoubtedly express if there is such a reason, might be able to accept this amendment.

Mr. ERLBORN. Mr. Chairman, I thank the gentleman for his support.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I yield to the gentleman from Pennsylvania.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I will say to the chairman of the full committee that I felt that I am bound by the vote of the full committee, which, as I recall, was 22 to 11 not to accept the amendment offered by the gentleman from Illinois.

I have tried to negotiate portions of this matter with him, but unsuccessfully, even though we have been very successful in reaching agreements on many other pieces of legislation.

Mr. GOLDWATER. Mr. Chairman, will the gentleman yield?

Mr. ERLBORN. I will be happy to yield to the gentleman from California.

Mr. GOLDWATER. I thank the gentleman for yielding. I would like to ask him a question. I can appreciate what the gentleman is trying to do, and that is to protect the parties' sources of information, but is there anywhere any protection to eliminate the inclusion of vicious rumors, subjective opinions, false statements, or honest mistakes that are in the records that are supplied by these parties?

Mr. ERLBORN. Yes. I would point out that the information in the file will be made available quite generally, whether it is derogatory, defamatory, or whatever. We will only protect the confidential source.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Thirty-six Members are present, evidently not a quorum.

In view of the inoperability of the electronic device, the Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 636]

Ashley	Fraser	Parris
Baker	Fulton	Patman
Bergland	Gibbons	Pike
Bingham	Ginn	Poage
Blatnik	Goodling	Podell
Boggs	Grasso	Quie
Brasco	Gray	Rarick
Breaux	Green, Oreg.	Reid
Broomfield	Hanrahan	Riegle
Brotzman	Hansen, Wash.	Roncallo, N.Y.
Burton, John	Hébert	Rooney, N.Y.
Burton, Phillip	Heckler, Mass.	Rosenthal
Camp	Jarman	Runnels
Carey, N.Y.	Jones, Ala.	Sandman
Chappell	Jones, N.C.	Shoup
Clay	Kuykendall	Stark
Cohen	Leggett	Steele
Conable	Lukens	Steiger, Ariz.
Conlan	McEwen	Teague
Coughlin	McKinney	Tierman
Cronin	Madigan	Ullman
Davis, Ga.	Martin, Nebr.	Veysey
Diggs	Mathias, Calif.	Woldie
Dingell	Mayne	Wilson
Downing	Melcher	Charles H. Calif.
Drinan	Mitchell, Md.	Wyatt
Esch	Murphy, Ill.	Wyman
Eshleman	Murphy, N.Y.	Young, Alaska
Evans, Colo.	Nichols	Zion
Foley	Ober	
Ford	O'Hara	

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McFALL)

having assumed the chair, Mr. BRADEMAs, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 16373, and finding itself without a quorum, he had directed the roll to be called, when 344 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania (Mr. MOORHEAD).

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment.

I oppose the amendment because I think it makes second-class citizens out of some 4½ million Government employees, civil and military. And I wish to report to the membership that the amendment is opposed by the Government Employees Council, AFL-CIO.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. At this time I yield to my colleague on the committee, the gentleman from Florida (Mr. FASCELL).

Mr. FASCELL. Mr. Chairman, I thank the gentleman for yielding.

I also am strongly opposed to this amendment, because what it does is set up a whole new exemption and write a provision into law which does not now exist. Otherwise there would be no reason for the amendment.

The amendment specifically exempts from the provisions of this bill identity or source of information. There is no such exemption now in the law.

Other Members, just as I have been, have been asked many, many times to give information. Never have I had any Government agency or agent say to me, "Sir, the information you give me is classified" or "The information will be kept confidential."

Mr. Chairman, what the pending amendment would do is write this tremendous loophole into the statutes of this country and change the complete thrust of this bill. That is what this amendment does, is to give the applicant the right to look at information; the burden is then on him to prove his innocence without ever knowing who the person was or what the source was of the adverse or derogatory information.

Mr. Chairman, this amendment destroys the principal purpose of this bill.

Ms. ABZUG. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentlewoman from New York.

Ms. ABZUG. Mr. Chairman, I might add that should there be any serious question of the need to protect the confidentiality of informants' identity for law enforcement activities or for national security purposes, that identity would be protected under specific exemptions in the bill which we have before us.

So that the only purpose that the amendment offered by the gentleman from Illinois (Mr. ERLBORN) would serve would be, as has been stated by

both of my colleagues on the committee, to exempt millions of civilian employees and military employees from the safeguard provisions of this bill, which are so desperately needed. The need for privacy protections for these particular groups has been amply documented by a GAO report which is in our committee and which the gentleman is well aware of.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, in the interest of brevity, I yield back the balance of my time and I hope that a vote can be called for promptly.

Mr. GOLDWATER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise with certain reservations with regard to this amendment. I likewise am greatly concerned with protecting the rights of applicants for civil service employment and with insuring that the applicants have access to information about him that is furnished by third parties. I likewise recognize the difficult question regarding policy matters contained in this particular bill, in that, if taken in its true sense, opens up disclosure of third-party information.

I would like at this point to ask the author of the amendment (Mr. ERLBORN) a few questions if he would be kind enough to respond.

Mr. ERLBORN, what in this provision provides for the applicant to rebut or to countermand any vicious rumors or subjective opinions or false statements or honest mistakes taken from third parties about an individual?

Mr. ERLBORN. If the gentleman will yield, the bill itself provides for the first time the right of access by an individual to records maintained concerning himself or herself, and the bill provides that if the individual believes that the information is inaccurate, he has a right to demand that the information be corrected. This is as to all records generally and can be applicable to these free employment and security investigation files as well. Therefore, the application of the bill—not the amendment—but the application of the bill is such that it provides this right to the individual to demand that a file be made accurate if he considers it to be inaccurate.

Mr. GOLDWATER. How will the applicant know that there is included in his file information from a third party or confidential source?

Mr. ERLBORN. Will the gentleman yield?

Mr. GOLDWATER. Yes, I yield to the gentleman.

Mr. ERLBORN. As provided in my amendment, the information contained in the file will be made available to the individual about whom the file has been maintained.

Only to the extent that the confidential source would be compromised would we keep the name of the individual who is the confidential source or such information as would identify him from the applicant. That information would be kept from the individual seeking information. Otherwise, all the rest of the contents of the file, including any of this

derogatory information, would be made available to the jobseeker.

Mr. GOLDWATER. Is it your understanding that your amendment notwithstanding, the applicant would be allowed to file with this information obtained from a confidential source his own version or his own rebuttal or perhaps his own denial of that accusation or erroneous information?

Mr. ERLBORN. Yes. Under the terms of the bill itself, that would be a remedy available to the individual about whom the file was kept.

Mr. GOLDWATER. One other question: It is my understanding that promises of confidentiality have in most cases only been made on the strength of bureaucratic authority as to most Civil Service records and that there is no statutory authority for agencies to grant confidentiality or protection; am I correct?

Mr. ERLBORN. If the gentleman will yield, in the past, of course, an individual never had an opportunity to go into his security clearance file or into his free employment file.

Therefore, the question really never arose.

In the past there has been lawfully express and implied promises of confidentiality given to those who have made statements to investigators.

The function of this bill, if it is not amended by the Erlenborn amendment, will be to open up all of those old files so that those statements that were given in confidence will now be made available to the individual.

The gentleman from Florida says that he has never had any promises, express or implied. In that case, his name will be made available if he is one who has given such a statement, because the only thing that would be protected are those confidential sources.

Mr. GOLDWATER. Obviously, it appears by this language in the amendment that we are in essence legitimizing this practice.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. GOLDWATER was allowed to proceed for 1 additional minute.)

Mr. GOLDWATER. One last question. Mr. Chairman, and that is: This gives discretion to the agency to arbitrarily decide which information it will supply, and which information it will withhold. The question that occurs to me is, Where is the check and balance? It is the intention of this committee that information should be disclosed to an applicant or to an individual upon request, but, if there is this discretion within the agency, then where is the check and the balance? Where is the impartial review, the in camera inspection to determine whether in fact all information is included, or whether in fact third parties should perhaps be made available?

Mr. ERLBORN. If the gentleman will again yield, I think the general access to the courts, as we provided in the bill, would provide that. However, let me make this one additional point, and that is that many Members of this House, myself not included, but many Members of the House have sponsored the news-

men's shield bill, realizing the great advantage that there is in confidential sources, and it will protect such sources of newsmen and newspapers, and it would shield them so that they would not have to reveal their sources and, if we pass that legislation we would find that possibly just wild rumors could be printed in the paper, and the source of the information to the news media could not be revealed.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto do now close.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. ERLBORN).

The question was taken, and the Chairman announced that the noes appeared to have it.

RECORDED VOTE.

Mr. ERLBORN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by clerks, and there were—ayes 192, noes 177, not voting 65, as follows:

[Roll No. 637]

AYES—192

Abdnor	Fisher	Mahon
Anderson, Ill.	Flowers	Mallory
Andrews	Flynt	Monn
N. Dak.	Forsythe	Maraziti
Archer	Fountain	Martin, Nebr.
Arends	Frelinghuysen	Martin, N.C.
Armstrong	Frenzel	Mayne
Ashbrook	Frey	Millford
Bauman	Fuqua	Miller
Beard	Gettys	Minshall, Ohio
Bell	Ginn	Mizell
Bevill	Goodling	Mollohan
Blester	Gray	Moorhead,
Blackburn	Gross	Calif.
Bray	Grover	Myers
Breaux	Gubser	Nedzi
Brinkley	Gude	Nelsen
Brotzman	Guyer	O'Brien
Brown, Mich.	Hammer-	Patten
Brown, Ohio	schmidt	Pettis
Broyhill, N.C.	Hansen, Idaho	Pike
Broyhill, Va.	Hastings	Powell, Ohio
Burgener	Hays	Preyer
Burke, Fla.	Heckler, Mass.	Price, Tex.
Burleson, Tex.	Heinz	Pritchard
Butler	Henderson	Quile
Byron	Hillis	Quillen
Carter	Hinshaw	Randall
Casey, Tex.	Hogan	Regula
Clancy	Holifield	Rhodes
Clausen	Holt	Roberts
Don H.	Horton	Robinson, Va.
Clawson, Del	Hosmer	Robison, N.Y.
Cleveland	Huber	Rousselot
Collier	Hunt	Ruppe
Collins, Tex.	Hutchinson	Satterfield
Conte	Ichord	Scherle
Coughlin	Jarman	Schneebeli
Crane	Johnson, Colo.	Sebelius
Daniel, Dan	Johnson, Pa.	Shriver
Daniel, Robert	Jones, Okla.	Shuster
W., Jr.	Jones, Tenn.	Sikes
Davis, S.C.	Jordan	Skubitz
Dellenback	Kemp	Smith, N.Y.
Denholm	Ketchum	Snyder
Dennis	Lagomarsino	Spence
Derrinski	Landgrebe	Stanton
Devine	Latta	J. William
Dickinson	Lent	Steel
Downing	Lott	Steele
Duncan	Lujan	Steiger, Ariz.
du Pont	McClory	Steiger, Wis.
Edwards, Ala.	McCloskey	Stratton
Erlborn	McCollister	Stubblefield
Esch	McDade	Symms
Findley	McEwen	Talcott
Fish	McKay	Taylor, Mo.

Taylor, N.C.	Wampler	Winn
Thomson, Wis.	Ware	Wylder
Thone	Whalen	Wyllie
Treen	White	Young, Alaska
Ullman	Whitehurst	Young, Fla.
Vander Jagt	Widnall	Young, Ill.
Veysey	Wiggins	Young, S.C.
Waggonner	Williams	Zion
Walsh	Wilson, Bob	Zwach

NOES—177

Abzug	Gibbons	Passman
Adams	Gilman	Pepper
Addabbo	Goldwater	Perkins
Alexander	Gonzalez	Peyster
Anderson, Calif.	Green, Pa.	Pickle
Andrews, N.C.	Gunter	Price, Ill.
Annunzio	Haley	Rangel
Ashley	Hamilton	Rees
Aspin	Hanley	Reid
Badillo	Hanrahan	Reuss
Barfalis	Hansen, Wash.	Rinaldo
Barrett	Harrington	Rodino
Bennett	Hawkins	Roe
Blaggi	Hechler, W. Va.	Rogers
Bingham	Helstoski	Roucallo, Wyo.
Boland	Hicks	Rooney, Pa.
Bolling	Holtzman	Rose
Bowen	Howard	Rosenthal
Brademas	Hudnut	Rostenkowski
Breckinridge	Hungate	Roush
Brooks	Johnson, Calif.	Roy
Brown, Calif.	Karsh	Roybal
Buchanan	Kastenmeter	Ryan
Burke, Calif.	Kazen	St Germain
Burke, Mass.	Kluczynski	Sarasin
Burlison, Mo.	Koch	Sarbanes
Burton, John	Kyros	Schroeder
Burton, Phillip	Leggett	Selberling
Carney, Ohio	Lehman	Shupley
Chisholm	Litton	Sisk
Clay	Long, La.	Slack
Collins, Ill.	Long, Md.	Smith, Iowa
Conyers	Lukens	Stanton
Corman	McCormack	James V.
Cotter	McFall	Stark
Culver	McSpadden	Steelman
Daniels	Macdonald	Stephens
Dominick V.	Madden	Stokes
Danielson	Matsunaga	Studds
de la Garza	Mazzei	Sullivan
Delaney	Meeds	Symington
Dellums	Melcher	Thompson, N.J.
Dent	Metcalf	Tierney
Diggs	Mezvisinsky	Traxler
Dingell	Mills	Udall
Donohue	Minish	Van Derlin
Down	Mink	Vander Veen
Drinan	Mitchell, N.Y.	Vanik
Eckhardt	Moakley	Vigorito
Edwards, Calif.	Montgomery	Whitten
Ellberg	Moorhead, Pa.	Wilson
Evans, Colo.	Morgan	Charles, Tex.
Evins, Tenn.	Mosher	Wolf
Fascell	Moss	Wright
Flood	Murphy, N.Y.	Yates
Foley	Murtha	Yatron
Ford	Natcher	Young, Ga.
Fraser	Nix	Young, Tex.
Gardos	O'Byrne	Zablocki
Glaimo	O'Hara	
	Owens	

NOT VOTING—65

Baker	Grasso	Podell
Bergland	Green, Oreg.	Rallsback
Blatnik	Griffiths	Rarick
Boggs	Hanna	Riegle
Brasco	Harsha	Roncallo, N.Y.
Broomfield	Hebert	Rooney, N.Y.
Camp	Jones, Ala.	Runnels
Carey, N.Y.	Jones, N.C.	Ruth
Cederberg	King	Sandman
Chamberlain	Kuykendall	Shoup
Chappell	Landrum	Staggers
Clark	McKinney	Stuckey
Cochran	Madigan	Teague
Cohen	Mathias, Calif.	Thornton
Conable	Mathis, Ga.	Towell, Nev.
Conlan	Michel	Waldie
Cronin	Mitchell, Md.	Wilson
Davis, Ga.	Murphy, Ill.	Charles H.
Davis, Wis.	Nichols	Calif.
Dulski	O'Neill	Wyatt
Eshleman	Parris	Wyman
Froelich	Patman	
Fulton	Poage	

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I rise to see if I can determine how many more amendments

there are expected to be offered, to see if it would be possible to arrive at an agreement on time for closing debate on this legislation.

Mr. ERLBORN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman from Illinois.

Mr. ERLBORN. Mr. Chairman, we just checked at the minority desk as to how many amendments we are aware of. There are about 12 or 13, not all of them are contested; probably 4 or 5 are contested.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I will not make my unanimous-consent request at this point.

AMENDMENT OFFERED BY MR. FASCELL

Mr. FASCELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FASCELL: Page 31, line 5, strike out line 5 and all that follows through line 13 and insert in lieu thereof the following:

"(3) In any suit brought under the provisions of subsection (g)(1) (B) or (C) of this section in which the court determines—

"(A) that the agency has refused or failed to comply with any of the provisions of this section, or any rule promulgated thereunder, the United States shall be liable to the individual in an amount equal to the sum of—

"(1) actual damages sustained by the individual as a result of the refusal or failure; and

"(2) the costs of the action together with reasonable attorney fees as determined by the court; or

"(B) that the agency's refusal or failure has been willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—

"(1) actual damages sustained by the individual as a result of the refusal or failure;

"(2) punitive damages allowed by the court; and

"(3) the costs of the action together with reasonable attorney fees as determined by the court."

Mr. FASCELL. Mr. Chairman, what my amendment does is to restore to the bill language which was in the bill in subcommittee, stricken out in the full committee, dealing with damages, the right of damages and remedies available to the individual.

If the members of the committee will follow me, in the present bill on page 31 with the section we are talking about, they will find the remedies in the lawsuit there for actual damages sustained by the individual, together with the court costs and reasonable attorney fees.

The Members will notice, however, that it is predicated only in those cases where there is willful, arbitrary or capricious action by the agency. There, the Members will find a complete departure from ordinarily understood law, tort law. A remedy that would be available to an individual if he were damaged in this case, we limit his recovery to actual damages. We require him to prove that he was damaged by a willful, arbitrary, or capricious violation, the kind of burden which is a very difficult burden, I assure the Members, as a lawyer. The Members who are lawyers know that, we place that kind of a burden only in those cases where we seek punitive damages.

So, what my amendment would do would be to restore the right of actual damage in those cases where there is a refusal or a failure to comply with the law, aside from whether it is willful, capricious or arbitrary; just sheer negligence, whether it is inadvertent or not. When there is a refusal or inability or a failure to comply with the law, we will allow the individual redress for actual damages and the cost of the action.

Then, what we do in those cases where we have willful, arbitrary or capricious action by an agency is to allow recovery for actual damage and punitive damage. So, what this amendment does, to recap, is to take the reasonable remedy, restore the rights to the individual who is actually damaged in the cases where, in the present bill now, it is only actual damages in cases of willful, arbitrary or capricious action. My amendment would give the person the right to recover actual damages in cases where there is a failure to comply with the law. It would also give him punitive damages in those cases where there is willful, arbitrary or capricious action by the agency.

Mr. BUTLER. Mr. Chairman, will the gentleman yield for a question?

Mr. FASCELL. Yes.

Mr. BUTLER. My understanding is that, in effect, what you are providing for are punitive damages in case of willful, arbitrary, or capricious action of the United States in withholding information?

Mr. FASCELL. The gentleman is correct. That is one part of the amendment.

Mr. BUTLER. Can the gentleman cite me a precedent in the statutes in the United States, or has the United States adopted a law holding itself open for willful punitive damages? Can the gentleman cite me a statute where any nation of the world has held itself open for punitive damages in the statute?

Mr. FASCELL. Frankly, I do not have that citation. But the gentleman knows where one has a willful, capricious, arbitrary action by the Government, and one is trying to protect the rights of the individual, mine or the gentleman's, it seems to me that leaving it to the court to decide whether or not there ought to be punitive damages under our system is reasonable. I am perfectly willing to leave it to the system. We do it in all kinds of cases with respect to the individual redress against the Government of the United States.

Mr. BUTLER. May I fairly observe there is no sovereignty in the world that exposes itself to punitive damages by a statute of this nature?

Mr. FASCELL. I thank the gentleman for his observation.

Mr. McCLOSKEY. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from California.

Mr. McCLOSKEY. I thank the gentleman for yielding. I think we have made an exhaustive study of the statutes of this Nation, and if we are to adopt by this amendment punitive damages, it would be the first time in history that the United States has made itself subject to punitive damages for any cause or in any case. We have adopted six or seven

provisions by statute to impose attorney's fees against the United States, but this would be the first time for punitive damages.

I would like to ask the gentleman in the well, is it not true that there would be no way of ascertaining in advance of any one year, when this Congress is ascertaining the budget, what might possibly be the amount of damages that might be awarded?

Mr. FASCELL. The gentleman is absolutely correct. And we have the same problem in respect to awards made in condemnation cases. We have the same problem.

Mr. McCLOSKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to speak against this amendment, and I would like to call the attention of my colleagues to the very real problem that the amendment imposes on a government servant. We have just overridden a presidential veto of the Freedom of Information Act, and we have put in that statute extremely strong and rigorous provisions, penalizing a Government agency and an employee who may improperly withhold information from the public or from the Congress or from other Federal employees. We have wanted to penetrate the veil of secrecy which Government agencies and Government bureaucrats have been accustomed to throw around the protection of information.

If we enact this amendment however, we will, in effect, be placing upon the Government bureaucrat the choice that if he reveals information improperly, he may subject his agency to punitive damages. If he withholds the information, on the other hand, he is subject only to ordinary damages, attorneys' fees, and costs.

Government employees, faced with that choice, faced with the imposition of punitive damages if they improperly release information, as against only attorneys' fees and costs if they improperly withhold will be tempted to withhold. We thus endanger that great principle which we have just established when we overrode the presidential veto of the Freedom of Information Act Amendments.

Mr. FASCELL. Will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman.

Mr. FASCELL. Let us talk about my problem. You are a Government employee and I want some information from you, is there any hardship on you or any burden to make that information available to me?

Mr. McCLOSKEY. I may violate the Freedom of Information Act if I do not reveal it. Yet I may be subject to punitive damages if I do.

Mr. FASCELL. No, the punitive damage language only says, "willful, capricious, or arbitrary."

Mr. McCLOSKEY. Mr. Chairman, I do not think any of us who have practiced law would care to stake our future and our future careers on what some court might determine to be "willful, capricious, and arbitrary."

Mr. FASCELL. Mr. Chairman, will the gentleman yield further?

Mr. McCLOSKEY. Certainly.

Mr. FASCELL. Then I would suggest to the gentleman that he should make the information completely available to them.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, the gentleman has spoken of the term "willful, arbitrary, and capricious."

Can the gentleman give me any reason in the world why I, as a person who has been injured, should not recover actual damages from a dumb but ineffective bureaucrat, since I can get them from one who acts willfully?

One can be hurt just as badly by a dumb, well intentioned person as one can by an intelligent, conniving one, can he not?

Mr. McCLOSKEY. Mr. Chairman, let me respond to the gentleman in this way: that we are trying to balance two great interests here. We are trying to balance the necessity of balancing the budget, and we are trying to protect the Government from undue liability.

I think it is wrong to make the Government of the United States and this congressional budget subject to an absolutely incalculable amount of liquidated damages. If we had a hundred lawsuits, and if we had a hundred verdicts of \$1 million each, there would be no guarantee in any way that this Congress could protect itself against that liability. It seems to me, when we balance the rights of the individual against the Government, that to add punitive damages and to set this kind of a precedent is an unfortunate mistake. It would be the first time in history this has occurred.

This would be singling out invasion of privacy as a particular right of an individual against the Government, a right that would weigh heavier than all other rights.

We have just seen a Presidential veto sustained in the case of an individual who could not recover damages against the Government in an ordinary lawsuit. Why should we make invasion of privacy a special right with this extraordinary remedy?

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield further?

Mr. McCLOSKEY. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, aside from the point the gentleman is making with respect to punitive damages, the question I am raising is that this amendment is the only vehicle that would correct the situation, because actual damages are not available to an injured party because the person who hurt him did not do so intentionally.

Is that not what the gentleman reads in the original language, and is that not corrected by the amendment?

Mr. McCLOSKEY. Mr. Chairman, I do not believe that the individual is denied actual damages if he can prove them. In cases of this kind, of course, it is quite often difficult to prove actual damages, but that is not necessarily a reason to

establish the extraordinary remedy of punitive damages.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I wish to speak only briefly. I simply wish to point out, if I understand the amendment correctly, the thrust of the first part of the amendment is to avoid what seems to me to be a terrible error in the bill, and that is this: that a person who is injured by virtue of a mistake unintentionally made by a bureaucrat has no redress for that injury.

Will the author of the amendment inform me whether I am correct on that?

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from Florida.

Mr. FASCELL. Mr. Chairman, the gentleman from Texas is absolutely correct.

That provision is totally lacking in the bill, and that is what this amendment provides.

If the gentleman will yield further, I would like to respond to some of the remarks made by the gentleman from California. The gentleman said that we would not know how much money this would cost and that there is no way to budget it. That is the same problem the Government is faced with in all claims bills. We do not at any time know how much money it will cost and how much should be budgeted. Of course, I feel after today that we may never pass any again, but nevertheless we are stuck with the same problem in that respect.

It seems to me that this matter can be spelled out in a different way. We would force these individuals to file private claims bills. After numerous bills were filed and after they tried to get redress, we would force these people to take action. As the gentleman from Texas has said, this should be a matter of legal right, and they should have the right to collect damages.

Mr. ECKHARDT. Mr. Chairman, it also seems to me that the fears concerning punitive damages are ill-founded. The court must agree in these situations that they should be granted. I feel that the courts would seldom grant them against the United States if the United States was acting properly.

Mr. FASCELL. The gentleman is absolutely correct.

Mr. ERLÉNBOEN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I know that the erudite gentleman from Texas (Mr. Eckhardt) is a lawyer. I have heard the gentleman discourse very learnedly on the floor of the House before. I understand the gentleman from Florida (Mr. FASCELL) also has legal training.

As I believe most of the lawyers here in the House know, it is a general principle of law that the Government, in exercising its governmental functions, is not liable.

In exercising the proprietary functions, the Government can be liable; but it would be, as has been pointed out by others debating this amendment, un-

precedented to make Government liable for punitive damages, because there has been no precedent in the past for making any Government liable for punitive damages.

I would also like to point out that the bill, as it was being considered in committee, had a punitive damage section. The committee, in its wisdom, removed that by amendment before reporting the bill.

I hope the committee will be sustained on the floor and the amendment will be defeated.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I regret that I cannot, as floor manager, accept this amendment, although as an individual Member I support it.

Permit me to explain my position. When the bill was reported by the subcommittee, it contained a punitive damages provision. However, this provision, by a close 18 to 14 vote in the full committee, was deleted.

Therefore, although I personally support the amendment, I do not feel, as floor manager, that I can argue in favor of the amendment.

Let me state to the Chair that after the action on this amendment, it is the intention of myself to move that the committee rise.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida (Mr. FASCELL).

The amendment was rejected.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. BRADENAS, Chairman of the Committee of the Whole House on the State of the Union, reported that that committee, having had under consideration the bill H.R. 16373 to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, had come to no resolution thereon.

U.S. DISTRICT JUDGE COMMENDED FOR OPPOSING DEPARTMENT OF JUSTICE ATTEMPT TO PREVENT PROSECUTION OF JAKE JACOBSEN FOR MAJOR CRIME

(Mr. FISHER asked and was given permission to address the House for 1 minute, to revise and extend his remarks.)

Mr. FISHER. Mr. Speaker, when the Department of Justice recently asked U.S. District Judge Robert M. Hill, in Dallas, to dismiss an indictment there against Jake Jacobsen, involving \$825,000 in savings and loan funds, the judge very properly revolted. He insisted no valid grounds were presented and that the defendant should be made to answer for a crime of this magnitude.

There was no claim the charge against Jacobsen was not fully justified.

Then, when the district attorney, act-

ing on orders from Washington, refused to prosecute, Judge Hill proceeded to appoint three members of the bar to do that job. But, believe it or not, so determined was Attorney General Saxbe's Department of Justice to protect Jacobsen against being tried for an \$825,000 crime, it requested and obtained a stay order in the Fifth Circuit Court of Appeals—pending full review of the issue.

Mr. Speaker, ostensibly the dismissal request stemmed from a copout deal with Jacobsen under which the latter agreed to testify against John Connally involving a claim Connally had somehow misused \$10,000 in milk funds in Washington.

Obviously, the Office of Special Prosecutor, headed at the time by Leon Jaworski, and Attorney General William Saxbe were determined to pay any price for testimony which would suit their needs. Jacobsen not only wangled a virtual pardon for an \$825,000 major crime out of Saxbe and the Office of Special Prosecutor, but in their gleeful spirit of triumphant generosity they also, for good measure, agreed to forgo Federal prosecution of another felony pending against Jacobsen in Washington.

This will probably go down as the most lopsided and most incredible windfall ever accorded a man accused of a major crime.

It should be emphasized that there was no remote relationship—none whatever—between the misapplication of saving and loan funds in Texas and the Watergate investigation and related indictments in Washington. Therefore, the practice of plea bargaining, applicable to multiple offenses or degree of offenses, flowing out of a common transaction, has no application in the situation I have described.

Is it any wonder Judge Hill would not be a party to such a scandalous transaction? He is to be commended for his law-and-order attitude. In this day and time when so many treat crime so lightly, it is refreshing to have a judge who believes in upholding the dignity of the law.

Incidentally, Mr. Speaker, the big losers in the \$825,000 savings and loan fund indictment reside in my district. The savings and loan company is located in my hometown. Those people are not interested in the high flights and poetry of Washington-based copouts. They want justice administered to the man accused of robbing them of their hard-earned money.

On last August 22 I wrote Attorney General Saxbe a letter in which I asked him the following two questions:

1. Specifically, what if anything was wrong with the Texas case, what are the legal grounds, to justify this extraordinary action of dismissal?
2. Is the proposed dismissal recommended by the U.S. District Attorney whose responsibility it would be to prosecute Jacobsen in the Texas case?

Mr. Speaker, that letter was written 3 months ago. Up to this time I have not received even the courtesy of an acknowledgment from the Attorney General.

The fact is there are in fact no legal grounds for dismissal, and the fact is the U.S. district attorney handling the \$825,000 indictment did not initiate a request for dismissal.

Quite obviously, therefore, it would be

The Secretary of the Treasury has very broad outstanding authority to dispose of our gold. Current law provides that "... he may sell gold in any amount at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest..." I believe that the oversight authority provided by my bill properly belongs to the Congress. This is yet another area where the executive branch has unlimited power and where the people's Representatives in Congress should have the right to oversee any action taken.

There is clearly no valid reason for denying Congress the oversight authority provided by my bill. The Secretary of the Treasury was initially granted his broad powers for the purpose of stabilizing the value of our currency at a time when it was redeemable in gold. The gold-reserve requirements for Federal Reserve notes and deposits have been abolished, however, and the reduction of the monetary role of gold, begun in the days of the New Deal, has now been completed.

It is clear that the power to dispose of this national treasure, our gold reserves, must not rest in one individual. I plan to reintroduce this legislation requiring Congressional approval of the sale, alienation, or commitment of our gold on Monday, September 23, and I welcome your support.

IN DEFENSE OF PRIVACY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. MCKINNEY) is recognized for 5 minutes.

Mr. MCKINNEY. Mr. Speaker, I rise in support of H.R. 16373, the Privacy Act of 1974. This bill is virtually identical to legislation I helped to introduced when I first came to Congress 4 years ago. Since that time I, along with every other citizen in this country, have been alarmed over the consistent erosion and Government abuse of our right to privacy. The Watergate revelations, in which we learned of Government surveillance of innocent citizens, illegal wiretapping, misuse of income tax data, collection of personal dossiers, have helped to create a growing distrust and even fear of Government in the minds of millions of Americans.

To meet these myriad abuses I had hoped Congress would promptly enact a much more comprehensive and inclusive bill than is represented by H.R. 16373. The aim of this legislation is to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies. However, I recognize there must be a first step in protecting the personal freedom of privacy and there is no better place to begin than the safeguarding of individual records held by Government agencies.

We have reached the point in our history when we must determine whether we are to be a people who controls their Government or a Government that controls its people. By passage of this legislation we are insuring that it is, indeed, the people who control their Government, for this bill, in a sense, gives a conscience to our Government computers and tells our citizens that they are indeed individuals, not mere numbers on a card.

For the first time the American public will be made aware of the existence and characteristics of all personal information systems kept by every Federal agency and each citizen will be able to review and correct his record as compiled by Government agencies, to correct inaccurate or misleading information in the records that can be so damaging. For the first time citizens will be able to control the transfer of personal information about him from one Federal agency to another for nonroutine purposes and no records concerning political and religious beliefs of individuals can be maintained by Federal agencies unless expressly authorized by law or an individual himself. Moreover, the availability of records containing personal information will be limited to agency employees who need access to them in the performance of their duties.

In essence, H.R. 16373 provides a series of basic safeguards for the individual to help remedy the misuse of personal information by the Federal Government and reassert the fundamental right of personal privacy of all Americans.

Mr. Speaker, we have a long way to go before our citizens are once again confident that the constitutional guarantee of privacy is not a mere abstraction but is a fundamental facet of our system of Government. The Privacy Act of 1974, as I have said, is a first step to reestablishing confidence that Government does indeed respect the freedoms guaranteed in the Constitution.

I would hope my colleagues in the Congress will not rest complacent upon passage of the legislation before us today. There is much work to be done in the area of privacy and we must address the many other aspects—protection of income tax records; protection of computer files held by private industry; privacy of bank records and credit ratings; surveillance of innocent citizens, to name but a few—to once again insure privacy as an intrinsic individual liberty, inherent to our system of democracy.

FEDERAL ELECTIONS COMMISSION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. FRENZEL) is recognized for 60 minutes.

Mr. FRENZEL. Mr. Speaker, the Federal Election Campaign Act Amendments of 1974—Public Law 93-443—signed into law just last month by President Ford, is an important milestone in the reform of our system of campaign financing. In the past, probably the most important reason for the failure of campaign finance reform legislation has been the lack of an effective enforcement agency or mechanism. The 1974 law attempts to remedy this problem by providing a vehicle for fair, vigorous, equitable enforcement—a Federal Elections Commission.

The Commission is established to administer, seek to obtain compliance with, and formulate overall policy for the disclosure requirements enacted by the 1971 law, contribution and expenditure limitations, public financing provisions, and

other provisions of law which relate to campaign financing.

With the passage of the 1974 act and establishment of the Commission, Congress has made a most important official move to recognize, and to begin to redress, the dangerous lack of public confidence in politics and government at all levels.

The Commission is unique among Federal institutions. Two of the Commissioners are appointed by the President; two are appointed by the Speaker of the House upon the recommendations of the majority and minority leaders of the House; two are appointed by the President pro tempore upon the recommendations of the majority and minority leaders of the Senate. All six voting members must be confirmed by both the House and Senate for 6-year terms. In recognition of the complexity, scope, and importance of the new Commission's work, the law states that "members shall be appointed on the basis of maturity, experience, integrity, impartiality and good judgment."

The effectiveness of the new law will be dependent on the ability of the Commission to oversee and enforce the act's intricate provisions and maintain its own integrity, independence, and impartiality in dealing with sensitive issues.

Both the Congress and the President are presently contemplating their choices of nominees for these crucial positions. To aid this process, it may be helpful to list some of the vast array of responsibilities and powers vested in the Federal Elections Commission and to review some of the regulatory decisions required immediately. The following is a summary of the major duties and powers of the Commission, categorized by function, which, while not all-inclusive, will indicate their range and complexity.

GENERAL RESPONSIBILITIES

After being nominated, the Commissioners-designate will be subjected to confirmation hearings. They will be expected to display knowledge of the law, a grasp for the failings of the old system, and a willingness to devote long hours to assuring the smooth functioning of the Commission.

Upon final appointment, the Commissioners will need to find a office/headquarters. There will be countless budgeting, equipment, and hardware decisions. The Commissioners will have to appoint a staff director, general counsel and other members of the staff. Skillful personnel selection is essential if the Commission is to meet its varied responsibilities. Considerable administrative skill will be needed at this stage. A few wrong decisions might seriously impair the future operation of the Commission.

The Commissioners must develop written rules for the conduct of the Commission's activities. These rules will provide guidelines for the staff and future Commission decisions.

The Commissioners will be responsible for formulating overall, general policy for the 1971 act—containing disclosure provisions—the criminal code sections relating to campaign financing—contribution and expenditures limitation and so forth—and the Presidential Election

NAYS—109

Abdnor	Davis, Wis.	Mahon
Andrews, N.C.	de la Garza	Mallory
Andrews,	Denholm	Mann
N. Dak.	Dennis	Martin, Nebr.
Archer	Devine	Mathis, Ga.
Arends	Dickinson	Mayne
Ashbrook	Evans, Colo.	Miller
Bafalis	Evins, Tenn.	Mizell
Baker	Findley	Montgomery
Bauman	Fisher	Nichols
Beard	Fountain	Passman
Bennett	Gooding	Price, Tex.
Bevill	Gross	Quillen
Blackburn	Hammer-	Randall
Blatnik	schmidt	Roberts
Bowen	Henderson	Robinson, Va.
Bray	Hicks	Rousselot
Brinkley	Holt	Ruppe
Broyhill, N.C.	Hosmer	Ruth
Burleson, Tex.	Huber	Satterfield
Burlison, Mo.	Hutchinson	Scherle
Butler	Ichord	Shuster
Byron	Jarman	Spence
Casey, Tex.	Johnson, Calif.	Steed
Chappell	Johnson, Colo.	Steiger, Ariz.
Clausen,	Johnson, Pa.	Stubblefield
Don H.	Jones, Ala.	Symms
Clawson, Del.	Jones, Okla.	Taylor, Mo.
Cleveland	Jones, Tenn.	Taylor, N.C.
Cochran	Ketchum	Thomson, Wis.
Collier	Landgrebe	Treen
Collins, Tex.	Latta	Waggonner
Conlan	Long, Md.	Wampler
Daniel, Dan	Lott	Whitten
Daniel, Robert	McCollister	Young, S.C.
W. Jr.	McEwen	Young, Tex.
Davis, Ga.	McKay	Zion
Davis, S.C.	McSpadden	

NOT VOTING—37

Armstrong	Harsha	Rarick
Bergland	Hébert	Riegle
Boggs	Heckler, Mass.	Roncallo, Wyo.
Brasco	Jones, N.C.	Roncallo, N.Y.
Camp	Kuykendall	Rooney, N.Y.
Conable	Landrum	Runnels
Crane	Lujan	Sarbanes
Dulski	Luken	Sebelius
Eshleman	Minshall, Ohio	Sikes
Gialmo	Patman	Staggers
Grasso	Poage	Wyman
Griffiths	Podell	
Hanna	Powell, Ohio	

So the conference report was agreed to.

The Clerk announced the following pairs:

Mrs. Boggs with Mr. Dulski.
Mr. Hébert with Mrs. Grasso.
Mr. Sikes with Mr. Luken.
Mr. Riegle with Mrs. Griffiths.
Mr. Rooney of New York with Mr. Hanna.
Mr. Gialmo with Mr. Rarick.
Mr. Staggers with Mr. Kuykendall.
Mr. Sarbanes with Mr. Crane.
Mr. Bergland with Mr. Harsha.
Mr. Jones of North Carolina with Mr. Camp.
Mr. Landrum with Mr. Eshleman.
Mr. Roncallo of Wyoming with Mr. Conable.
Mrs. Heckler of Massachusetts with Mr. Lujan.
Mr. Runnels with Mr. Minshall of Ohio.
Mr. Sebelius with Mr. Patman.
Mr. Roncallo of New York with Mr. Powell of Ohio.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MINISH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the conference report to accompany S. 386, the Urban Mass Transportation Assistance Act of 1974, just agreed to.

The SPEAKER. Is there objection to

the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO HAVE UNTIL MIDNIGHT, TUESDAY, NOVEMBER 26, 1974, TO FILE A REPORT, ALONG WITH MINORITY AND/OR SEPARATE VIEWS, ON H.R. 17488

Mr. MILLS. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means may have until midnight, Tuesday, November 26, 1974, to file a report on the bill, H.R. 17488, the Energy Tax and Individual Relief Act of 1974, along with any minority and/or separate views.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

PERSONAL EXPLANATION

Mr. RONCALIO of Wyoming. Mr. Speaker, I wish to state that I would like the record to show that on the vote on the conference report on S. 386, the Urban Mass Transportation Assistance Act of 1974, just completed, I was unable to return to the floor in order to record my vote. I was in conference on the strip mine bill.

Had I been present and voted, I would have voted against the conference report.

SENATE OVERRIDES PRESIDENTIAL VETO ON FREEDOM OF INFORMATION ACT

(Mr. MOORHEAD of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I take this occasion to advise the Members of the House that the other body has followed the leadership of the House and has voted to override the veto on the Freedom of Information Act.

PRIVACY ACT OF 1974

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 16373) to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies.

The SPEAKER. The question is on the motion offered by the gentleman from Pennsylvania (Mr. MOORHEAD).

The motion was agreed to.

The SPEAKER. The Chair requests the gentleman from Tennessee (Mr. FULTON) to assume the Chair temporarily.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 16373, with

Mr. FULTON (Chairman pro tempore) in the chair.

The CHAIRMAN pro tempore. When the Committee rose on yesterday, the amendment in the nature of a substitute to the bill was subject to amendment at any point.

Are there further amendments?

AMENDMENT OFFERED BY MR. MOORHEAD OF PENNSYLVANIA

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MOORHEAD of Pennsylvania: On page 31, strike lines 5 through 9 and insert in lieu thereof the following:

"(3) In a suit brought under the provisions of subsection (g)(1)(B) or (C) of this section in which the court determines that the agency failed or refused to comply with any provision of subsection (g)(1)(B) or (C) of this section, the United States shall be liable to the individual in an amount equal to the sum of—"

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, the purpose of this amendment is to insure that persons who are actually damaged by the failure of the Government agency to comply with the provisions of subsection (g)(1)(B) or (C) are compensated for their losses.

The amendment does not contain a provision for punitive damages, which was objected to yesterday. There is nothing in this amendment, therefore, which subjects the Government to an undue burden. The burden is on the citizen. The citizen must prove that there was a violation of the provision of this act. He must then prove that the adverse determination which damaged him was caused by the above violation. He must finally prove the damages caused by the violation.

With this substantial burden already placed on the litigant, I see no reason to require that proof also be offered of willful, arbitrary, or capricious action by the defendant agency.

This amendment was suggested as a reasonable compromise by the gentleman from Texas (Mr. ECKHARDT), and I now yield to him.

Mr. ECKHARDT. Mr. Chairman, I thank the distinguished subcommittee chairman.

It will be recalled by those who heard the debate yesterday that the primary objection to the Fasel amendment was that the Government should not be subjected to punitive damages. I think that that was the major ground upon which that amendment was defeated.

Frankly, had I thought that the Government would practically be so jeopardized, I would have voted against it too. I did not think that it was a practical danger, but this amendment completely removes that proposition.

However, the amendment does afford a correction of what seemed to me to be a very bad defect in the existing language, and that is that even though a person may not be able to get a job because his record falsely indicated his having been discharged when he had in fact resigned, if an agent of Government made an innocent mistake in failing to go through with the procedure provided in this bill and the person whose record

Continued to 36976

have some things in it others do not want.

It is something I think that the House can get behind, and I do know the deep interest of the gentleman from Pennsylvania and the gentleman from Illinois in this subject matter, as well as the other Members of the committee, and I know that their oversight on this will be an active and living oversight in the days to come. You cannot grow a full-grown oak by one act, planting. Every piece of legislation that I have worked on in the 32 years I have been here has had to be supervised by the committee or attended to and changed from time to time, with changing conditions, or with information that comes in that indicates changes are necessary. I want to commend both of the gentlemen and members of the committee for work they have done on this. I believe it is a good bill and I intend to vote for it.

Mr. MOORHEAD of Pennsylvania. I thank the gentleman for his kind remarks.

Mr. KEMP. Mr. Chairman, I rise in support of the bill H.R. 16373, the proposed Privacy Act of 1974, and the principles embodied within it. The American people deserve the type of protection of their privacy provided by this legislation and I ask that it be passed overwhelmingly.

This is not a new subject area to me. During this Congress I have sponsored or cosponsored 16 separate measures relating to the right of privacy. These measures would tighten policy and procedures in such practices as the exchange of information about individuals between Government agencies and Government and industry; the use of social security numbers and other coding systems as universal identifiers; the procedures for approval of wiretaps and other forms of electronic surveillance; the inspection of confidential Federal income tax returns by unauthorized parties; the scope of the exclusions from the Freedom of Information Act; and various forms of surveillance.

As a member of the Task Force on Privacy, the extensive final report of which was released several months ago, I had an opportunity to participate in the formulation of specific recommendations on what actions the Congress ought to take to further assure the adequacy of law as to the right of privacy.

And, as a member of the Committee on Education and Labor, I was deeply involved in—and supportive of—the enactment of the recent amendment to the Elementary and Secondary Education Act, an amendment tightening procedures for disclosure of information from student records maintained by school systems. Offered in the Senate by the distinguished and learned Senator from New York, JAMES L. BUCKLEY, this amendment, known as the Family Educational Rights and Privacy Act of 1974, is now law and became effective yesterday.

I regard the consideration of this bill today—the first comprehensive privacy bill to be reported by a House committee—as an indication both of the actual need for the protections embodied within

it and of the growing awareness among legislators of that need.

THE PRIVACY ACT OF 1974

The bill before us, the Privacy Act of 1974, injects a new sensitivity to individual rights into all the recordkeeping practices of the Federal Government.

These fair information practices assert that there should be no recordkeeping system whose existence is a secret; that personal information in all files should be accurate, complete, relevant and up-to-date; that individuals should be able to review and correct almost all Federal files about themselves; that information gathered for one purpose should not be used for another without the individual's consent; and, that the security and confidentiality of personal files should be assured.

The adoption of these rules as Federal policy is of historic dimensions.

In amending title 5, Government organization and employees, of the United States Code, to reflect these rules, the following specific requirements would be given force of law:

Permits an individual to have access to records containing personal information on him kept by Federal agencies, for purposes of inspection, copying, supplementation and correction—with certain exceptions, including law enforcement and national security records.

Allows an individual to control the transfer of personal information about him from one Federal agency to another for nonroutine purposes by requiring his prior written consent.

Makes known to the American public the existence and characteristics of all personal information systems kept by every Federal agency.

Prohibits the maintenance by Federal agencies of any records concerning the political and religious beliefs of individuals unless expressly authorized by law or an individual himself.

Limits availability of records containing personal information to agency employees who need access to them in the performance of their duties.

Requires agencies to keep an accurate accounting of transfers of personal records to other agencies and outsiders and make such an accounting available, with certain exceptions to the individual upon his request.

Requires agencies, through formal rulemaking, to list and describe routine transfers and establish procedures for access by individuals to records about themselves, amending records, handling medical information, and charging fees for copies of documents.

Makes it incumbent upon an agency to keep records with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in making determinations about him.

Provides a civil remedy by individuals who have been denied access to their records or whose records have been kept or used in contravention of the requirements of the act. The complainant may recover actual damages and costs and attorney fees if the agency's infraction was willful, arbitrary, or capricious.

Makes unlawful possession of or disclosure of individually identifiable in-

formation by a government employee punishable by a fine not to exceed \$5,000.

Provides that any person who requests or obtains such a record by false pretenses is subject to a fine of not to exceed \$5,000.

And, sets forth statutory provisions relating to archival records; requires annual report from the President on agency uses of exemptions; and provides that the law would become effective 180 days following enactment.

On the whole, these are the recommendations arising from the initial protection of privacy bill introduced this Congress, the Goldwater-Koch-Kemp bill, particularly as those recommendations relate to access, inspection, copying, supplementation, and correction of records.

The few problems associated with the bill reported by the Committee are susceptible, I believe, to remedy through the amendment process this afternoon.

PRIVACY OF MEDICAL RECORDS AND MEDICAL INFORMATION

Subsection (f) (3) of the proposed section 552a of title 5 would require that each agency maintaining a system of records to promulgate rules to establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him.

The committee's report clarifies this section with the following language:

If, in the judgment of the agency, the transmission of medical information directly to a requesting individual could have an adverse effect upon such individual, the rules which the agency promulgates should provide means whereby an individual who would be adversely affected by receipt of such data may be apprised of it in a manner which would not cause such adverse effects. An example of a rule serving such purpose would be transmission to a doctor named by the requesting individual.

As one who is particularly concerned with the right of privacy as it pertains to medical records and information—those records and that information held by the Federal agencies as well as those held within the States—I am encouraged by the direction of the committee's action in this regard. But, more should be done.

It is for that reason that I introduced, on October 11, the bill, H.R. 17323, to establish a Federal Medical Privacy Board with responsibility for promoting protection of the right of privacy as it relates to personal medical information.

That bill would establish a comprehensive, mandatory program of protection of the confidentiality of medical records held by Federal agencies and would establish a financial assistance program to States which develop adequate programs for the protection of non-Federal records, held by Government or within the private sector, in their respective States.

This subject is too serious—and potentially too far-reaching—to be dealt with as just one of many items to be covered by a more comprehensive act. I support, as I indicated earlier, the provision in the bill now before us as to medical records, but I do not feel it is adequate.

Continued to p. 36976

November 21, 1974

pared for the National Science Foundation. R-1044-NSF. March 1974. Santa Monica, Calif., Rand Corp., 1974.

U.S. Congress. House. Committee on Government Operations. *Federal information systems and plans—Federal use and development of advanced technology*. Hearings before the Subcommittee on Foreign Operations and Government Information. 93rd Cong. 1st and 2d session, Washington, U.S. Govt. Printing Office, 1973, 1974.

U.S. Congress. Senate. Committee on the Judiciary. *Federal data banks, computers and the Bill of Rights*. Hearings before the Subcommittee on Constitutional Rights. 92nd Cong. 1st session, Washington, U.S. Govt. Printing Office, 1971.

U.S. Department of Health, Education, and Welfare. Secretary's Advisory Committee on Automated Personal Data Systems. *Records, computers, and the rights of citizens*. Washington, U.S. Govt. Printing Office, 1973.

Westin, Alan F. and Michael A. Baker. *Databanks in a free society: computers, record-keeping, and privacy*. Report of the project on Computer Data-banks of the Computer Science and Engineering Board. National Academy of Science. New York, Quadrangle Books, 1972.

Wheeler, Stanton. *On record: files and dossiers in American life*. New York, Russell Sage Foundation, 1969.

The CHAIRMAN. Are there any further amendments? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the committee rises.

Accordingly the Committee rose; and the Speaker having resumed the Chair (Mr. BRADENAS) Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill H.R. 16373 to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, pursuant to House Resolution 1419, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If no, the question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. ERLNBORN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 353, nays 1, not voting 80, as follows:

[Roll No. 641]

YEAS—353

Abdnor	Dorn	Long, La.
Abzug	Downing	Long, Md.
Adams	Drinan	Lott
Addabbo	Duncan	Lujan
Alexander	du Pont	McClary
Anderson,	Eckhardt	McCloskey
Calif.	Edwards, Ala.	McCollister
Anderson, Ill.	Edwards, Calif.	McCormack
Andrews, N.C.	Ellberg	McDade
Andrews,	Erlenborn	McEwen
N. Dak.	Esch	McFall
Annunzio	Evins, Tenn.	McKay
Archer	Fascell	McKinney
Arends	Findley	Macdonald
Ashley	Fish	Madden
Badillo	Fisher	Madigan
Baralis	Flood	Mahon
Baker	Flowers	Mallary
Barrett	Flynt	Mann
Bauman	Foley	Maraziti
Beard	Ford	Martin, Nebr.
Bennett	Forsythe	Martin, N.C.
Bevill	Fountain	Mathias, Calif.
Biaggi	Fraser	Mathis, Ga.
Biester	Frelinghuysen	Matsumaga
Bingham	French	Mayne
Blackburn	Frey	Maywell
Blatnik	Fulton	McEis
Bolling	Fuqua	Melcher
Bowen	Gaydos	Mezvisinsky
Brademas	Gettys	Michel
Bray	Gibbons	Milford
Brocklinridge	Gillman	Miller
Brinkley	Ginn	Mills
Broomfield	Goldwater	Minish
Brotzman	Gonzalez	Mink
Brown, Calif.	Goodling	Mitchell, Md.
Brown, Mich.	Gray	Mitchell, N.Y.
Brown, Ohio	Green, Oreg.	Mizell
Broyhill, N.C.	Green, Pa.	Moakley
Broyhill, Va.	Griffiths	Mollenhan
Bucannan	Gross	Montgomery
Burgener	Gubser	Moorhead,
Burke, Fla.	Gude	Calif.
Burke, Mass.	Gunter	Moorhead, Pa.
Burleson, Tex.	Guyer	Morgan
Burlison, Mo.	Haley	Mosher
Burton, John	Hamilton	Murphy, Ill.
Burton, Phillip	Hammer-	Murtha
Butler	schmidt	Myers
Byron	Hanley	Natcher
Carney, Ohio	Hauna	Nedzi
Carter	Hanrahan	Neisen
Casey, Tex.	Hansen, Idaho	Nichols
Cederberg	Harrington	Nix
Chamberlain	Hawkins	O'bey
Chisholm	Hechler, W. Va.	O'Brien
Clark	Heinz	O'Hara
Clausen,	Helstoski	O'Neill
Don H.	Henderson	Owens
Clawson, Del.	Hicks	Parris
Cleveland	Hinshaw	Passman
Cochran	Hollifield	Patten
Cohen	Holt	Pepper
Collier	Holtzman	Perkins
Collins, Ill.	Horton	Pettis
Collins, Tex.	Hosmer	Peyser
Conlan	Howard	Pickle
Conte	Huber	Pike
Conyers	Hudnut	Preyer
Corman	Hungate	Price, Ill.
Cotter	Hutchinson	Price, Tex.
Coughlin	Ichord	Pritchard
Cronin	Jarman	Quile
Culver	Johnson, Calif.	Rallsback
Daniel, Dan	Johnson, Colo.	Randall
Daniel, Robert	Johnson, Pa.	Rees
W. Jr.	Jones, Okla.	Regula
Davis, Ga.	Jones, Tenn.	Reid
Davis, S.C.	Jordan	Reuss
Davis, Wis.	Kazen	Rinaldo
de la Garza	Kemp	Roberts
Delaney	Ketchum	Robinson, Va.
Dellenback	King	Robison, N.Y.
Dellums	Koch	Rodino
Dennholm	Kyros	Rogers
Dennis	Lagomarsino	Roncallo, Wyo.
Derwinski	Leggett	Rooney, Pa.
Dickinson	Lehman	Rose
Dingell	Lent	Rosenthal
Donohue	Litton	Rostenkowski

Roush
Rousselot
Roy
Roybal
Ruppe
Ruth
Ryan
Sandman
Sarasin
Sarbanes
Satterfield
Scherle
Schneebell
Schroeder
Seiberling
Shipley
Shriver
Shuster
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Stanton,
J. William
Stanton,
James V.
Stark
Steed

Steele
Steeiman
Steiger, Ariz.
Steiger, Wis.
Stokes
Stratton
Stubblefield
Stuckey
Studds
Sullivan
Symington
Talcott
Taylor, Mo.
Taylor, N.C.
Thompson, N.J.
Thomson, Wis.
Thone
Thornton
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Vessey
Vigorito
Waggonner
Walsh
Wampler

NAYS—1

Landgrebe

NOT VOTING—80

Armstrong	Froehlich	Patman
Ashbrook	Gialino	Passer
Aspin	Grasso	Poehl
Bell	Grover	Powell, Ohio
Bergland	Hansen, Wash.	Quillen
Boggs	Harsha	Rangel
Boland	Hastings	Rarick
Brasco	Hays	Rhodes
Breaux	Hébert	Riegle
Brooks	Heckler, Mass.	Roe
Burke, Calif.	Hillis	Roncallo, N.Y.
Camp	Hogan	Roney, N.Y.
Carey, N.Y.	Hunt	Rudds
Chappell	Jones, Ala.	St Germain
Clancy	Jones, N.C.	Schellus
Clay	Karst	Shoup
Connally	Kastenmeier	Sikes
Crane	Kluczynski	Staggers
Daniels,	Kuykendall	Stephens
Domick, V.	Landrum	Symms
Danielson	Latta	Teague
Dent	Luken	Tierman
Devine	McSpadden	Traxler
Diggs	Metcalfe	Waldie
Dulski	Minshall, Ohio	Wyman
Eshleman	Moss	Young, Ga.
Evans, Colo.	Murphy, N.Y.	Young, S.C.

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Dulski.
Mrs. Boggs with Mr. Aspin.
Mr. Moss with Mr. Luken.
Mr. Sikes with Mr. McSpadden.
Mr. Boland with Mr. Young of Georgia.
Mr. Rooney of New York with Mr. Tierman.
Mr. Gialmo with Mr. Traxler.
Mr. Staggers with Mr. Patman.
Mr. Hays with Mr. Minshall of Ohio.
Mr. Bergland with Mr. Kuykendall.
Mr. Chappell with Mr. Hunt.
Mr. Carey of New York with Mr. Hogan.
Mr. Brooks with Mr. Camp.
Mrs. Burke of California with Mr. Froehlich.
Mr. Breaux with Mr. Ashbrook.
Mr. Kluczynski with Mr. Grover.
Mr. Landrum with Mr. Devine.
Mr. Metcalfe with Mrs. Grasso.
Mr. Murphy of New York with Mr. Conable.
Mr. Teague with Mr. Hillis.
Mr. St Germain with Mr. Powell of Ohio.
Mr. Riegle with Mr. Bell.
Mr. Latta with Mr. Hastings.
Mr. Rangel with Mrs. Hansen of Washington.
Mr. Roe with Mr. Crane.
Mr. Jones of Alabama with Mr. Harsha.
Mr. Kastenmeier with Mr. Eshleman.
Mr. Karth with Mr. Clancy.

foreign-flag airlines by the U.S. Government for the transportation of international mail. The provision for payment by our own Government of mail transportation rates to airlines lower than those paid to other airlines.

The Federal Aviation Act empowers the Government to pay the rate to be paid U.S.-flag airlines for the transportation of international mail. The rate being paid has been unchanged since 1968, at \$1.31 per ton-mile despite substantial increases in airline costs and substantial increases in postal service for international mail.

The Postal Service, however, pays U.S. airlines up to \$1.73 per ton-mile for first class mail, and 57.7 cents for all other classes of mail. This payment is the maximum for the air transportation of mail established periodically by international agreement of the various national administrations, including the United States, in the Universal Postal Union. According to testimony in 1973, foreign flag airline companies received from the U.S. Government a mail transportation rate which was higher than that paid to U.S. flag airlines.

Almost most other nations of the world pay their international airlines for the transportation of international mail. U.S. airlines compete in passenger and cargo markets with these airlines at rates that are agreed to by international airlines and their governments to assure international air transport services. In the case of mail payments, the major source of international revenue, such parity does not exist. As a result of this disparity in mail rates, U.S.-flag airlines in 1973, for example, received \$68 million less than they would have if they were reimbursed by the U.S. Government at the rate paid to other flag airlines which compete in the international business.

The committee thoroughly considered the fact that the CAB set international rates for U.S. carriers at a level no higher than the current Universal Postal Union rate. However, we chose not to do so for two important reasons. First, we believed that the UPU postal rate was a level significantly above what U.S. carriers to carry the mail. In setting the rate, different costing methods are used than those used by the U.S. Government. The costs also reflect the relative efficiencies of short-haul foreign airlines.

We believe the UPU rate is an adequate subsidy for carrying the mail to other nations choose to pay their airlines and other air carriers without to realistic costs. While we believe this indirect subsidization gives U.S. airlines a competitive advantage to other airlines, we do not believe that it requires that the United States directly subsidize its privately owned airlines. Second, if the United States paid the UPU postal rates to all international airlines, the rate would go to the financially healthy

international carriers as well as the relatively weak. In other words, U.S. carriers not now experiencing financial difficulty would receive windfall revenues under the UPU rate which we do not believe are justified.

Accordingly, the Senate Commerce Committee today approved an amendment to S. 3481, as passed by the House, which would strike the mandatory UPU postal rates from the House bill and substitute a provision similar to the original Senate bill.

In effect, the committee amendment continues to leave with the CAB the responsibility for setting fair and reasonable air mail rates at whatever level the board finds appropriate. However, the amendment admonishes the Board in setting such rates that—

It shall take into consideration rates paid for transportation of mail pursuant to the universal postal union convention as ratified by the United States Government, shall take into account all of the rate-making elements employed by the Universal Postal Union in fixing its airmail rates and shall further consider the competitive disadvantage to U.S. flag air carriers resulting from foreign air carriers receiving universal postal union rates for the carriage of U.S. mail and the national origin mail of their own countries.

Mr. President, we think that this is a fair and equitable amendment and will result in mail rates that are just and reasonable taking into account all carriers' costs, including the ever-rising cost of fuel and a reasonable return on investment. While we are aware that there has been considerable lobbying of the Congress by Pan American Airways and its employees over the UPU postal rate, we still do not believe that that rate is justified by the facts. We in the Commerce Committee feel that this bill as I have proposed to amend it will be very helpful in the future in making a better competitive climate in the international area without the need for indirect subsidy from the international arena.

I urge my colleagues to support this bill as I have proposed to amend it and send it back to the House in hopes that the House might accept our amendment so as to insure final passage and Presidential signature this year.

Now, Mr. President, there was a hold placed on the bill by both Senators McGEE and PROXMIER. The amendment that I am offering is satisfactory to them. The proposed amendment has been approved by the Commerce Committee, as I have stated, as of this morning.

Mr. President, I send the amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

On page 4, strike section 4 in its entirety and insert in lieu thereof: "Rates for transportation of United States mail in foreign air transportation."

The amendment is as follows:

On page 4, strike section 4 in its entirety and insert in lieu thereof:

"RATES FOR TRANSPORTATION OF UNITED STATES MAIL IN FOREIGN AIR TRANSPORTATION
"Sec. 4. Subsection (h) of section 406 of the Federal Aviation Act of 1958 (49 U.S.C.

1376) is amended by inserting "(1)" immediately after "(h)", and by adding at the end thereof the following new paragraph:

"(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates."

"(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the rate-making elements employed by the Universal Postal Union in fixing its airmail rates, and shall further consider the competitive disadvantage to U.S. flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of U.S. mail and the national origin mail of their own countries."

Mr. CANNON. Mr. President, this amendment simply eliminates the requirement that the UPU be paid for carriage of foreign mail transportation and requires that that must be a factor taken into consideration by the Civil Aeronautics Board in fixing the rates.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. GOLDWATER. Mr. President, I have a question of the Senator from Nevada. Would this have a salutary effect on Pan American's—

Mr. CANNON. Yes. The answer to the question is that this would have a salutary effect. The provision that we have requires the Board to act immediately in fixing a temporary rate pending the outcome of the mail rate case that is now under consideration before the Board.

The passage of this bill would result in an increased payment to Pan Am upon the determination of the fair and reasonable rate to be paid, which has to be determined by the end of this month by the Civil Aeronautics Board.

In addition, it has certain policy matters set forth in the bill that we have already acted on that are going to require the Department of State and the Board to get off the dime and try to help the U.S. air carriers, to try to prohibit discrimination against U.S. air carriers that is carried on at the present time.

Mr. GOLDWATER. I thank the Senator very much.

Mr. CANNON. Mr. President, I move that the Senate concur in the House amendment, with the amendment that we have just submitted.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

PRIVACY ACT OF 1974

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3418.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes, as follows:

Strike out all after the enacting clause, and insert: That this Act may be cited as the "Privacy Act of 1974".

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful, arbitrary, or capricious action which violates any individual's rights under this Act.

SEC. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

"§ 552a. Records maintained on individuals
"(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any collection or grouping of information about an individual that is maintained by an agency and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

"(6) the term 'statistical research or reporting record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13.

"(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) for a routine use described under subsection (e) (2) (D) of this section;

"(3) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(4) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(5) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(6) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(7) to a person who is actively engaged in saving the life of such individual, if upon such disclosure notification is transmitted to the last known address of such individual;

"(8) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee; or

"(9) pursuant to the order of a court of competent jurisdiction.

"(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsection (b) (1) of this section or disclosures to the public from records which by law or regulation are open to public inspection or copying, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least

five years after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (6) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of discrepancy made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency within two years preceding the making of the correction of the record of the individual, except that this paragraph shall not apply to any record that was disclosed prior to the effective date of this section or for which no accounting of the disclosure is required.

"(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him to review the record and have a copy made of all or any portion thereof in a form comprehensible to him;

"(2) permit the individual to request amendment of a record pertaining to him and either—

"(A) make any correction of any portion thereof which the individual believes is inaccurate, relevant, timely, or complete; or

"(B) promptly inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review by the agency of that refusal, the name and business address of the official within the agency to whom the request for review may be taken;

"(3) permit any individual who disagrees with the refusal of the agency to amend his record to request review of the refusal by the official named in accordance with paragraph (2) (B) of this subsection; and if, after review, that official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the basis for his disagreement with the refusal of the agency;

"(4) in any disclosure, containing information about which the individual has a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and upon request, provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall deny an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

"(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) which Federal statute or regulation, if any, requires disclosure of the information;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) other purposes for which the information may be used, as published pursuant to paragraph (2) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(2) subject to the provisions of paragraph (5) of this subsection, publish in the

Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine purpose for which the records contained in the system are used or intended to be used, including the categories of users of the records for each such purpose;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him; and

"(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content;

"(3) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(4) maintain no record concerning the political or religious belief or activity of any individual, unless expressly authorized by statute or by the individual about whom the record is maintained: *Provided, however,* That the provisions of this paragraph shall not be deemed to prohibit the maintenance of any record of activity which is pertinent to and within the scope of a duly authorized law enforcement activity; and

"(5) at least 30 days prior to publication of information under paragraph (2)(D) of this subsection published in the Federal Register notice of the use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means the head of the agency may deem necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any, to any individual for making copies of his

record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (2) of this section in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency (A) refuses to comply with an individual request under subsection (d) (1) of this section, (B) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of records and consequently a determination is made which is adverse to the individual, or (C) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) In any suit brought under the provisions of subsection (g) (1) (B) or (C) of this section in which the court determines that the agency acted in a manner which was willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(4) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—Any officer or employee of the United States, who by virtue of his employment or official position, has possession of, or access to, agency rec-

ords which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the agency from any part of this section except subsections (b) and (e) (2) (A) through (F) and (1) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (2) (G) and (H), and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552(b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection of this section: *Provided, however,* any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would be eligible, as a result of the maintenance of such material, such material be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

"(4) required by statute to be maintained and used solely as statistical research or reporting records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that

the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence:

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

"(1)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be subject to all provisions of this section except subsections (c)(4); (d)(2), (3), and (4); (e)(1), (2)(H) and (3); (f)(4); (g)(1)(B) and (C), and (3).

"(m)(1) MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER.—No Federal agency, or any State or local government acting in compliance with any Federal law or federally assisted program, shall deny any individual any right, benefit, or privilege provided by law by reason of such individual's refusal to disclose his social security account number.

"(2) This subsection shall not apply—

"(A) with respect to any system of records in existence and operating prior to January 1, 1975; and

"(B) when disclosure of a social security account number is required by Federal law.

"(3) No Federal agency, or any State or local government acting in compliance with any Federal law or federally assisted program, shall use the social security account number for any purpose other than for verification of the identity of an individual unless such other purpose is specifically authorized by Federal law.

"(n) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the

application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section."

SEC. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

SEC. 5. The amendments made by this Act shall become effective on the one hundred and eightieth day following the date of enactment of this Act.

Amend the title so as to read: "An act to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies."

Mr. ERVIN. Mr. President, on November 21, just before the Thanksgiving recess, both the Senate and the House adopted in different forms—

The PRESIDING OFFICER. Will the Senator suspend briefly until the Chair gets order in the Senate.

I would like to ask the Members of the Senate to please bring order to the Chamber because the Senator from North Carolina is entitled to be heard and he cannot be heard. Would those members conversing please remove themselves to the cloakroom.

The Senator will continue to suspend until there is order in the Chamber.

The Senator may proceed.

Mr. ERVIN. On November 21, just before the Thanksgiving recess, both the Senate and the House passed in different forms Federal privacy legislation. Because of the limited amount of time available between the time of the reconvening of Congress after the recess and the end of the session of Congress members of the Government Operations Committee of the Senate and the House agreed that they would have the different versions studied by their respective staffs during the recess.

After the recess the members of the staffs who had made this study reported to the members of the two committees, and after that the members of the two committees met informally and agreed on the amendments that I will offer in behalf of all the original cosponsors of the privacy bill.

We thought this was a better way of doing it without having a conference and I have been assured by the members of the House Government Operations Committee interested in privacy legislation, that the House will accept these amendments which I propose on behalf of myself and all of the original cosponsors of the bill.

The main differences between the two versions which are reconciled here was that instead of establishing a privacy board, as the Senate bill did, that we will have a privacy study commission to study the subject and report back to the President, to the Senate, and to the House.

We also eliminated, in deference to the House, provisions of the bill dealing

with the private sector and we also eliminated some of the provisions dealing with law enforcement agencies.

Now, Mr. President, on behalf of the original cosponsors of the Senate bill and myself, I make this motion.

Mr. President, I move that the Senate agree to the engrossed amendments of the House to the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes, with the following amendments to such engrossed amendments:

In lieu of the matter proposed to be inserted by the House to the text of the bill, insert the following amendment which I now send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. ERVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House to the text of the bill, insert the following:

That this Act may be cited as the "Privacy Act of 1974".

SEC. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safe-

guards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

"(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

"(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13.

"(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instru-

mentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

"(11) pursuant to the order of a court of competent jurisdiction.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

"(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

"(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

"(B) the name and address of the person or agency to whom the disclosure is made;

"(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

"(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

"(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if any accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

"(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

"(2) permit the individual to request amendment of a record pertaining to him and—

"(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

"(B) promptly, either—

"(1) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(2) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

"(3) permit the individual who disagrees with the refusal of the agency to amend his

record to request a review of such refusal and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

"(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

"(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

"(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

"(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

"(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

"(B) the principal purpose or purposes for which the information is intended to be used;

"(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and

"(D) the effects on him, if any, of not providing all or any part of the requested information;

"(4) subject to the provisions of paragraph (1) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

"(A) the name and location of the system;

"(B) the categories of individuals on whom records are maintained in the system;

"(C) the categories of records maintained in the system;

"(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

"(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

"(F) the title and business address of the agency official who is responsible for the system of records;

"(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

"(H) the agency procedures whereby an in-

dividual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

"(1) the categories of sources of records in the system;

"(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

"(6) prior to disseminating any record about an individual to any person other than an agency, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant;

"(7) maintain no record describing how any individual exercises rights guaranteed by the first amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

"(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

"(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

"(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

"(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

"(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

"(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

"(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

"(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

"(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

"(5) establish fees to be charged, if any,

to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

"(g) (1) CIVIL REMEDIES.—Whenever any agency

"(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

"(B) refuses to comply with an individual request under subsection (d) (1) of this section;

"(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in my determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

"(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in this matters under the provisions of this subsection.

"(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

"(B) the costs of the action together with reasonable attorney fees as determined by the court.

"(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard

to the amount in controversy; within one year from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

"(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of the section, the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

"(i) (1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

"(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1), (2), and (4), (e) (4) (A) through (F) (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including gen-

added

era; notice) of sections 553(b) (1), (2) and (3) (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I), and (f) of this section if the system of records is—

"(1) subject to the provisions of section 552(b) (1) of this title;

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

"(4) required by statute to be maintained and used solely as statistical records;

"(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

"(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

"(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

"(1) (1) **ARCHIVAL RECORDS.**—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

"(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section shall, for the purposes of this section, be considered to be maintained by the National

Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (a) (4) (A) through (G) of this section) shall be published in the Federal Register.

"(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

"(m) **GOVERNMENT CONTRACTORS.**—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (1) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

"(n) **MAILING LISTS.**—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

"(o) **REPORT ON NEW SYSTEMS.**—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

"(p) **ANNUAL REPORT.**—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

"(q) **EFFECT OF OTHER LAWS.**—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

Immediately below:

"552. Public information; agency rules, opinions, orders, and proceedings."

Sec. 5. (a) (1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives.

Members of the Commission shall be chosen

from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission.

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5) (A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c) (1) In the course of conducting the study required under subsection (b) (1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs

and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2) (A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel, and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g) (1) (C) or (D) of title 5, United States Code; and

(iv) whether and how the standards for security and confidentiality of records required under section 552a (e) (10) of such title should be applied when a record is disclosed to a person other than an agency.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study, by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e) (1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpoena shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) (A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a (e) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and

regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

(f) (1) Each member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission.

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b) (1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be fined not more than \$5,000.

Sec. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies.

Sec. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security

number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

SEC. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which this Act is enacted.

SEC. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of \$1,500,000, except that not more than \$750,000 may be expended during any such fiscal year.

In lieu of the engrossed amendment to the title, insert the following:

Amend the title so as to read: "An Act to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes."

Mr. ERVIN. We preserve most of the essential elements of the Senate bill with these few minor changes.

I have been asked by the distinguished Senator from Louisiana, as chairman of the Finance Committee, the question whether these amendments would interfere with the practice of the Internal Revenue Service in furnishing information to the State taxing authorities and to congressional committees, and my assurance is that that will not be interfered with in any respect whatever.

I would like to address more specifically some other questions raised about how the bill will work with respect to tax information and tax returns. Specifically, the questions relate to the ability of the IRS to disclose tax information under the provision of the bill that allows disclosure for a routine use under a purpose which is compatible with the purpose for which the information is collected.

State and local tax agencies now heavily rely on Federal tax information and investigations when State agencies enforce their tax laws. For example, when the IRS sets up a deficiency against a taxpayer who lives in a State, the IRS frequently sends information on this deficiency to the State, or local, tax agency. The States use this information in collecting their own taxes. This information may be sent before the State itself conducts any tax investigation on the individual.

Under the bill, this is intended to constitute a routine use for a purpose compatible with the purpose for which the information was collected, so the IRS could continue to send this information to the State and local tax agencies as is presently done.

Also, the IRS sends to State, and local, tax agencies the Federal tax returns of individuals who live in the State so

the State agency can check to see if the individual has reported the same income and deductions on his Federal and State, or local, tax returns. Again, the States rely on this information in enforcing their own tax laws. Also, this information may be sent to a State before it conducts a tax investigation on its own.

Under the bill, it is intended that this would be a routine use for a purpose compatible with the purpose for which the information is collected so the IRS can continue to send tax information to State and local tax agencies in this way.

The IRS, of course, provides tax information on individuals to the Justice Department when the Justice Department is preparing a tax case against the individual. This information is used by the Justice Department in investigating and preparing tax cases and also is disclosed in court as the Justice Department presents evidence against the individual.

This disclosure both to the Justice Department and in court would represent a routine use of the tax information compatible with the purpose for which it was collected and this disclosure would continue to be possible under the provisions of the bill.

Under the bill tax returns and other tax information can—as under present law—be disclosed to the tax committees of the Congress—the Senate Finance Committee, the House Ways and Means Committee, and the Joint Committee on Internal Revenue Taxation.

Under the bill this information can also continue to be disclosed to the staffs of these committees, as under present law.

Under the bill an agency can disclose tax returns to either House of Congress or to committees of Congress—to the extent of matters within their jurisdiction. Since tax returns can be disclosed by an agency to the Senate and House, it is intended that—as under present law—the committees which have received tax returns can also disclose them to the Senate or House, just as the Joint Committee on Internal Revenue Taxation did with the tax information on President Nixon.

I have also prepared an analysis of these amendments which I submit entitled "Analysis of House and Senate Compromise Amendments to the Federal Privacy Act," which explains the provisions of the amendments.

Mr. President, I ask unanimous consent that this statement be printed at this point in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

ANALYSIS OF HOUSE AND SENATE COMPROMISE AMENDMENTS TO THE FEDERAL PRIVACY ACT

The establishment of a Privacy Protection Study Commission. Only the Senate bill provided for an oversight and study commission to assist in the implementation of the act and to explore areas concerned with individual privacy which have not been included in the provisions of this legislation. The compromise measure will establish a Privacy Protection Study Commission of seven members instead of the five provided in the Senate bill. Three of these members will be appointed by the President, two by the President of the Senate, and two by the Speaker of the House of Representatives.

The membership should be representative of the public at large who, by reason of their knowledge and expertise in the areas of civil rights and liberties, law, social sciences, and complete technology, business, and State and local government are well qualified for service on the Commission. While there is no statutory requirement, the Committees could expect that no more than five members of the Commission could be members of one political party.

It is intended that this commission, which will serve for a period of two years, will be solely a study commission. In that capacity it is hoped the commission can assist the Executive Branch and the Congress in their examination of Federal government activities and their impact on privacy as well as representatives of State and local governments and the private sector who are attempting to deal with this important problem.

The scope of the commission's study authority is outlined specifically within the legislation. In subsection (c)(2)(b), the commission is directed to examine certain issues which are not included in the compromise between the House and Senate bill, such as a requirement that a person maintaining mailing lists remove an individual's name upon request; the question of prohibiting the transfer of individually identifiable data from the Internal Revenue Service to other agencies and to Senate governments; a question of whether the Federal government should be liable for general damages occurring from a willful or intentional violation of the provisions of (g)(1)(C) or (D) of this act; and the extent to which requirements for security and confidentiality of records maintained under this act should be applied to a person other than an agency.

The commission shall from time to time and in an annual report, report to the Congress and to the President on its activities, and it shall submit a final report of its findings two years from the date the members of the commission are appointed.

In addition, the commission is authorized to provide necessary technical assistance and prepare model legislation upon request for State and local governments interested in adopting privacy legislation. Strict standards and penalties are placed upon commission members and employees with regard to the handling and unlawful distribution of information about individuals which it receives in the course of carrying out its functions.

While the provisions of the rest of this act do not go into effect until 270 days from the date of enactment, the commission is authorized to go into effect immediately upon the appointment of its members in order that some of its work may be available to the Congress and the Executive Branch by the time the remainder of the legislation becomes effective.

ROUTINE USE

The House bill contains a provision not provided for in the Senate measure exempting certain disclosures of information from the requirement to obtain prior consent from the subject when the disclosure would be for a "routine use". The compromise would define "routine use" to mean: "with respect to the disclosure of a record, the use of such records for a purpose which is compatible with the purpose for which it was collected."

Where the Senate bill would have placed tight restrictions upon the transfer of personal information between or outside Federal agencies, the House bill, under the routine use provision, would permit an agency to describe its routine uses in the Federal Register and then disseminate the information without the consent of the individual or without applying the standards of accuracy, relevancy, timeliness or completeness so long as no determination was being made about the subject.

The compromise definition should serve as a caution to agencies to think out in advance what uses it will make of information. This act is not intended to impose undue burdens on the transfer of information, to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information. It is, however, intended to discourage the unnecessary exchange of information to another person or to agencies who may not be as sensitive to the collecting agency's reasons for using and interpreting the material.

INFORMATION ON POLITICAL ACTIVITIES

The House bill tells agencies that they may not maintain a record concerning the political or religious beliefs or activities of any individual unless maintenance of the record would be authorized expressly by statute or by the individual about whom the record is maintained. The House bill goes on to provide that this subsection is not deemed to prohibit the maintenance of any record or activity which is pertinent to and within the scope of a duly authorized law enforcement activity.

The Senate bill constitutes a prohibition against agency programs established for the purpose of collecting or maintaining information about how individuals exercise First Amendment rights unless the agency head specifically determines that the program is required for the administration of a statute.

The compromise broadens the House provisions application to all First Amendment rights and directs the prohibition against the maintenance of records. However, as in the House bill, it does permit the maintenance, use, collection or dissemination of these records which are expressly authorized by statute or the individual subject or are pertinent to a duly authorized law enforcement activity.

CONFIDENTIAL SOURCES OF INFORMATION

The compromise provision for the maintenance of information received from confidential sources represents an acceptance of the House language after receiving an assurance that in no instance would that language deprive an individual from knowing of the existence of any information maintained in a record about him which was received from a "confidential source." The agencies would not be able to claim that disclosure of even a small part of a particular item would reveal the identity of a confidential source. The confidential information would have to be characterized in some general way. The fact of the item's existence and a general characterization of that item would have to be made known to the individual in every case.

Furthermore, the acceptance of this section in no way precludes an individual from knowing the substance and source of confidential information, should that information be used to deny him a promotion in a government job or access to classified information or some other right, benefit or privilege for which he was entitled to bring legal action when the government wished to base any part of its legal case on that information.

Finally, it is important to note that the House provision would require that all future promises of confidentiality to sources of information be expressed and not implied promises. Under the authority to prepare guidelines for the administration of this act it is expected that the Office of Management and Budget will work closer with agencies to insure that Federal investigators make sparing use of the ability to make express promises of confidentiality.

STANDARDS APPLIED TO DISSEMINATION OUTSIDE THE GOVERNMENT

H.R. 16373 requires that all records which are used by an agency in making any determination about an individual be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. S. 3418 goes much further and requires that agencies apply these standards at any time that access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file.

The difference between these two measures represents a difference in philosophy regarding the handling of personal information. The Senate measure is designed to complement the requirement that agencies maintain only information which is relevant and necessary to accomplish a statutory purpose. The standard of relevancy should be that statutory basis for an information program which is now set forth in (e) (1) of the compromise measure. By adopting this section, the Senate hoped to encourage a periodic review of personal information contained in Federal records as those records were used or disseminated for any purpose.

The House provision would have applied these important standards for maintenance of information in records at any time a determination is made about an individual. The House bill goes on to permit additional "routine uses" of information which may not rise to the threshold of an "agency determination" without requiring that the information be upgraded to meet these standards.

The compromise amendment would adopt the section of the House bill applying the standards of accuracy, relevance, timeliness and completeness at the time of a determination. It would add the additional requirement, however, that prior to the dissemination of any record about an individual to any person other than another agency, the sending agency shall make a reasonable effort to assure that the record is accurate, complete, timely, and relevant. This proviso was included because Federal agencies would be governed by a requirement to clean up their records before a determination is made and limited by a requirement to publish each routine use of information in the Federal Register, but the use of information by persons outside the Federal government would not be governed by this act. Therefore, agencies are directed to be far more careful about the dissemination of personal information to persons not governed by the enforcement provisions of this bill.

THE FREEDOM OF INFORMATION ACT AND PRIVACY

Perhaps the most difficult task in drafting Federal privacy legislation was that of determining the proper balance between the public's right to know about the conduct of their government and their equally important right to have information which is personal to them maintained with the greatest degree of confidence by Federal agencies. The House bill made no specific provision for Freedom of Information Act requests of material which might contain information protected by the Privacy Act. Instead, in the committee report on the bill, it recognized that:

"This legislation would have an effect on subsection (b) (6) of the Freedom of Information Act (5 U.S.C., Section 552) which states that the provisions regarding disclosure of information to the public shall not apply to material the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. H.R. 16373 would make all individually identifiable information in government files exempt from public disclosure. Such disclosure could be made available to the public only pursuant to rules

published by agencies in the Federal Register permitting the transfer of particular data to persons other than the individuals to whom they pertain."

The committee report went on to express a desire that agencies continue to make certain individually identifiable records open to the public because such disclosure would be in the public interest.

The Senate bill reflected the position of an earlier draft of the House measure in Section 205(b) where it provided that nothing in the act shall be construed to permit the withholding of any personal information which is otherwise required to be disclosed by law or any regulation thereunder. This section was intended as specific recognition of the need to permit disclosure under the Freedom of Information Act.

The compromise amendment would add an additional condition of disclosure to the House bill which prohibits disclosure without written request of an individual unless disclosure of the record would be pursuant to Section 552 of the Freedom of Information Act. This compromise is designed to preserve the status quo as interpreted by the courts regarding the disclosure of personal information under that section.

A related amendment taken from the Senate bill would prohibit any agency from relying upon any exemption contained in Section 552 to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

CIVIL REMEDIES

Under the House bill an individual would be permitted to seek an injunction against an agency only to produce his record upon a failure of an agency to comply with his request. An individual would be able to sue for damages only if an agency failed to maintain a record about him with such accuracy, relevance, timeliness and completeness as would be necessary to assure fairness and a determination about him, and consequently an adverse determination was made. A suit for damages would also be in order against an agency if it fails to comply with any other provision of this act in such a way to have an adverse effect on the individual.

Under the Senate bill injunctive relief would be available to an individual to enforce any right granted to him. And an individual would be permitted to sue for damages for any action or omission of an officer or employee of the government who violates a provision of the act.

The standard for recovery of damages under the House bill would have rested on the determination by a court that the agency acted in a manner which was willful, arbitrary, or capricious. The Senate bill would have permitted recovery against an agency on a finding that the agency was negligent in handling his records.

These amendments represent a compromise between the two positions, permitting an individual to seek injunctive relief to correct or amend a record maintained by an agency. In a suit for damages, the amendment reflects a belief that a finding of willful, arbitrary, or capricious action is too harsh a standard of proof for an individual to exercise the rights granted by this legislation. Thus the standard for recovery of damages was reduced to "willful or intentional" action by an agency. On a continuum between negligence and the very high standard of willful, arbitrary, or capricious conduct, this standard is viewed as only somewhat greater than gross negligence.

Both the House and Senate bills provided for an individual to recover reasonable attorney fees and costs of litigation. The compromise amendments adopt the standard of the House bill permitting the court to award attorney fees and reasonable costs to an individual where the complainant has sub-

stantially prevailed, in an injunctive action. Fees would be required to be paid with any award of damages.

ACCESS AND CHALLENGE TO RECORDS

The House bill would apply a standard of promptness to agency considerations of requests for access to records and requests to challenge or correct those records. In addition, it allows the individual to request a review of a refusal to correct a record by the agency official named in its public notice of information systems.

The Senate bill requires the agency to make a determination with respect to an individual's request for a record change within 60 days of the request and to permit him a hearing within 30 days of a request for one, with extension for good cause permitted. The individual would have the option of a formal or informal hearing procedure within the agency upon a refusal of a request to correct or amend a record. The compromise amendment would require the agency to respond within 10 working days to acknowledge an individual's request to amend a record. Following acknowledgement, the agency must promptly correct the information which the individual believes is not accurate, relevant, timely or complete or inform the individual of its refusal.

If the individual disagrees with the refusal of the agency to amend his record, the agency shall conduct a review of that refusal within 30 working days, provided that an extension may be obtained for good cause. We expect that agency heads will conduct these reviews themselves or assign officers of the rank of Deputy Assistant Secretary or above to review them.

The House bill would not have permitted a Federal District Court to review de novo an agency's refusal to amend a record. The compromise adopts the Senate provision which would require a de novo review of such refusal and to order a correction where merited. Finally, the compromise requires that in any disclosure of information subject to disagreement that the agency include with the disclosure a notation of any dispute over the information or a copy of any statement submitted by the individual stating his reasons for disagreement with the information.

ACCOUNTING FOR DISCLOSURES

Section c of the House bill requires an agency to inform any person or another agency about a correction or notation of dispute regarding a record that has been disclosed to that person or agency within two years before making the correction or notation. It would not apply if no accounting of the disclosure had been required. No such limitation was placed upon accounting for disclosures in the Senate bill and the compromise measure would require any person or agency receiving the record at any time before a notation or dispute is made to be notified if an accounting of the disclosures were made.

The House bill requires an agency to maintain an accounting for disclosures for only five years. The Senate bill places no limitation on the length of time for maintaining such disclosures. The compromise amendment would require maintaining of the disclosure for five years or the life of the record, whichever is longer.

LIMITATIONS ON THE TYPES OF INFORMATION COLLECTED AND THE USE OF THIRD PARTY INFORMATION

The Senate bill requires Federal agencies to maintain only such information about an individual as is relevant and necessary to accomplish a statutory purpose of the agency. The House bill did not address this issue. The compromise amendment modifies the Senate provision to permit the collection of information which would be required to accomplish not only a purpose set out by a

statute but also a purpose outlined by a Presidential Executive Order.

The provision is included to limit the collection of extraneous information by Federal agencies. It requires that a conscious decision be made that the information is required to meet the needs of an agency as dictated by a statute. Agencies should formulate as precisely as possible the policy objectives to be served by a data gathering activity before it is undertaken. It is hoped that multiple requests for information will be reduced and that agencies will collect no more sensitive personal information than is necessary.

The Senate bill also requires agencies to collect information to the greatest extent practicable directly from the subject when that information could result in an adverse determination about an individual's rights and benefits and privileges under a Federal program. The House bill had no provision, but the compromise amendment accepts the Senate language. This section is designed to discourage the collection of personal information from third party sources and therefore to encourage the accuracy of Federal data gathering. It supports the principle that an individual should to the greatest extent possible be in control of information about him which is given to the government. This may not be practical in all cases for financial or logistical reasons or because of other statutory requirements. However, it is a principle designed to insure fairness in information collection which should be instituted wherever possible.

ARCHIVAL RECORDS

The House bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered for purposes of this act, to be maintained by the agency which deposits the records. Records transferred to the National Archives after the effective date of this Act for purposes of historical preservation are considered to be maintained by the Archives and are subject only to limited provisions of the Act. Records transferred to the National Archives before the effective date of this Act are not subject to the provisions of this Act.

The Senate bill provides that records accepted by the Administrator of General Services for temporary storage and servicing shall be considered, for purposes of this Act, to be maintained by the agency which deposits the records. All records transferred to the National Archives for purposes of historical preservation are considered to be maintained by the Archives and are subject only to those provisions of this Act requiring annual public notice of the existence and character of the information systems maintained by the Archives, establishment of appropriate safeguards to insure the security and integrity of preserved personal information, and promulgation and implementation of rules to insure the effective enforcement of those safeguards.

The compromise amendment subjects records transferred to the National Archives for historical preservation to a modified requirement for annual public notice. It is intended that the notice provision not be applied separately and specifically to each of the many thousands of separate systems of records transferred to the Archives prior to the effective date of this Act, but rather that a more general description be provided which pertains to meaningful groupings of record systems. However, record systems transferred to the Archives after the effective date of this Act are individually subject to the specific notice provisions. This coverage is intended to support and encourage improvements in the organization and cataloging of records maintained by the Archives, both to make authorized access to such records simpler and

to insure broader application to Archival records of safeguards for data security and confidentiality.

MORATORIUM ON THE USE OF THE SOCIAL SECURITY ACCOUNT NUMBER

The House bill provides that a Federal agency, or a State or local government acting in compliance with Federal law or a federally assisted program, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Any such governmental agency is further prohibited from utilizing the social security account number for purposes apart from verification of individual identity except where another purpose is specifically authorized by law. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Exemption is further granted where disclosure of a social security account number is required by Federal law.

The Senate bill provides that a Federal agency, or a State or local government, is prohibited from denying to individuals rights, benefits or privileges by reason of refusal to disclose the social security account number. Persons engaged in the business of commercial transactions or activities are prohibited from discriminating against any individual in the course of such activities by reason of refusal to disclose the social security account number. Exempt from these prohibitions are systems of records in existence and operating prior to January 1, 1975. Also exempt are disclosures of the social security account number required by Federal law. This section further provides that any Federal, State or local government agency or any person who requests an individual to disclose his social security number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, what uses will be made of it, and what rules of confidentiality will govern it.

The compromise amendment changes the House language by broadening the coverage of State and local governments so as to prohibit any new activity by such a government that would condition a right, benefit or privilege upon an individual's disclosure of his social security account number.

To clarify the intent of the Senate and House, the grandfather clause of this section was re-stated to exempt only those governmental uses of the social security account number continuing from before January 1, 1975, pursuant to a prior law or regulation that, for purposes of verifying identity, required individuals to disclose their social security account number as a condition for exercising a right, benefit, or privilege. Thus, for illustration, after January 1, 1975, it will be unlawful to commence operation of a State or local government procedure that requires individuals to disclose their social security account number in order to register a motor vehicle, obtain a driver's license or other permit, or exercise the right to vote in an election. The House section was amended to include the Senate provision for informing an individual requested to disclose his social security account number of the nature, authority and purpose of the request. This provision is intended to permit an individual to make an informed decision whether or not to disclose the social security account number, and it is intended to bring recognition to, and discourage, unnecessary or improper uses of that number.

MAILING LISTS

The Senate bill prohibits the sale or rental of an individual's name and address by a Federal agency unless such action is specifically authorized by law. This section further

provides that upon written request of any individual, any person engaged in interstate commerce who maintains a mailing list shall remove the individual's name and address from such list.

The compromise amendment accepts the Senate prohibition of the sale or rental of mailing lists by Federal agencies. Names and addresses associated with other personal information obtained by Federal agencies pursuant to statute or executive order, or by unauthorized means, are thus not permitted to be sold or rented to the public. Public disclosure of mailing lists by authority of Section 552(b), the Freedom of Information Act, or by authority of other Federal law, is not prohibited. Public disclosure would be permitted in certain other circumstances where the agency determines that the potential for adverse effects from such disclosure on the privacy or other rights of persons on a mailing list are inconsequential and that the benefits likely to accrue to such persons and to the general public are clear and significant. In this regard, a directive from the Office of Management and Budget forbidding disclosure by Federal agencies of a person's name absent his specific consent would be relevant to the intent of this subsection.

RULEMAKING PROCEDURES FOR MAKING EXEMPTIONS

To obtain an exemption from certain provisions of this Act under the House bill, agencies entitled to those exemptions would be required to public notice of the proposed exemptions in the Federal Register pursuant to Section 553 of the Administrative Procedures Act permitting comments to be submitted in writing for inclusion in the Record with such exemptions.

The Senate bill applied a much more stringent standard and would have required agencies to hold adjudicatory hearings as provided in APA Sections 556 and 557. The compromise agreement would no longer require full adjudicatory proceeding by any agency seeking an exemption permitted under the act. However, agencies would still be required to publish notice of a proposed rulemaking in the Federal Register and could not waive the 30 day period for such publication. In addition it is specifically provided in this act that agencies obtaining such exemptions state the reasons why the system of records is to be exempted. Should objection be filed with the Commission to any rulemaking exemption, it is expected that the agency would respond specifically to each objection in setting forth its reason in support of the exemption.

DUTIES OF THE OFFICE OF MANAGEMENT AND BUDGET

Under the Senate bill the Privacy Protection Commission was directed to develop model guidelines and conduct certain oversight of the implementation of this Act to Federal agencies. Since the compromise amendment would change the scope of authority of the commission, it was felt there remained a need for an agency within the government to develop guidelines and regulations for agencies to use in implementing the provisions of the Act and to provide continuing assistance to and oversight of the implementation of the provisions of this Act by the agencies.

This function has been assigned to the Office of Management and Budget.

REPORTS ON NEW SYSTEMS

Under the Senate bill the Privacy Protection Commission was to have a central role in evaluating proposals to establish or alter new systems of information in the Federal government. If the commission had determined that such a proposal was not in compliance with the standards established by the Senate bill the agency which prepared the report could not proceed to establish

or modify an information system for 60 days in order to give the Congress and the President an opportunity to review that report and the commission's recommendations.

The compromise amendment still would require that agencies provide adequate advance notice to the Congress and to the Office of Management and Budget of any proposal to establish or alter a system of records in order to permit an evaluation of the privacy impact of that proposal. In addition to the privacy impact, consideration should be given to the effect the proposal may have on our Federal system and on the separation of powers between the three branches of government. These concerns are expressed in connection with recent proposals by the General Services Administration and Department of Agriculture to establish a giant data facility for the storing and sharing of information between those and perhaps other departments. The language in the Senate report on pages 64-66 reflects the concern attached to the inclusion of this language in S. 3418.

The acceptance of the compromise amendment does not question the motivation or need for improving the Federal government's data gathering and handling capabilities. It does express a concern, however, that the office charged with central management and oversight of Federal activities and the Congress have an opportunity to examine the impact of new or altered data systems on our citizens, the provisions for confidentiality and security in those systems and the extent to which the creation of the system will alter or change interagency or intergovernmental relationships related to information programs.

GOVERNMENT CONTRACTS

The Senate bill would have extended its provisions outside the Federal government only to those contractors, grantees or participants in agreements with the Federal government, where the purpose of the contract, grant or agreement was to establish or alter an information system. It addressed a concern over the policy governing the sharing of Federal criminal history information with State and local government law enforcement agencies and for the amount of money which has been spent through the Law Enforcement Assistance Administration for the purchase of State and local government criminal information systems.

The compromise amendment would now permit Federal law enforcement agencies to determine to what extent their information systems would be covered by the Act and to what extent they will extend that coverage to those with which they share that information or resources.

At the same time it is recognized that many Federal agencies contract for the operation of systems of records on behalf of the agency in order to accomplish an agency function. It was provided therefore that such contracts if agreed to on or after the effective date of this legislation shall provide that those contractors and any employees of those contractors shall be considered to be employees of an agency and subject to the provisions of the legislation.

DEFINITION OF RECORD

The definition of the term "Record" as provided in the House bill has been expanded to assure the intent that a record can include as little as one descriptive item about an individual and that such records may incorporate but not be limited to information about an individual's education, financial transactions, medical history, criminal or employment records, and that they may contain his name, or the identifying number, symbol, or other identifying particularly assigned to the individual, such as a finger or voice print or a photograph. The amended

definition was adopted to more closely reflect the definition of "personal information" as used in the Senate bill.

DEFINITION OF THE TERM AGENCY

Some questions have been raised regarding the applicability of H.R. 16373 and S. 3418 to the U.S. Postal Service, the Postal Rate Commission and similarly related entities.

H.R. 16373 defines "agency" to mean an agency as defined in Section 552(e) of Title V. S. 3418 defines the term "Federal agency" to mean any department, agency, instrumentality, or establishment in the Executive Branch of the Government of the United States and includes any officer or employee thereof.

A compromise agreement adopts the definition by reference to section 552(e) as provided in H.R. 16373. It is the intention of the House and Senate that the Federal Privacy Act clearly apply to the Postal Service, the Postal Rate Commission, and government corporations or government controlled corporations now in existence or which may be created in the future as provided in Public Law 93-502, the amendments to the Freedom of Information Act.

While Section 410(a) of Title 39 of the U.S. Code exempts the Postal Service Postal Rate Commission from legislation generally applicable to Federal agencies, barring a clear expression of Congressional intent to the contrary, is the considered intent of the committees which consider this legislation that it should apply to the Postal Service and Postal Rate Commission, notwithstanding the operation of Title 39 Section 410(a) of the United States Code.

Mr. ERVIN. Mr. President, I have also prepared a statement giving credit to members of the Government Operations Committee, and another statement giving credit to members of the Subcommittee on Constitutional Rights, which worked on privacy matters for many years, commending them for their work.

I would like to ask unanimous consent these be printed in the Record at this point.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT TO MEMBERS OF THE GOVERNMENT OPERATION COMMITTEE

Mr. President, S. 3418 represents the culmination of many months of work by the Committee on Government Operations to fashion legislation that will guarantee the rights of all Americans with respect to the gathering, use, and disclosure of information about them by the Federal Government.

Again, I want to express my gratitude to two members of this committee who have helped make this legislation possible Senator Percy from Illinois, the ranking minority member, and Senator Muskie from Maine, the chairman of the Subcommittee on Intergovernmental Relations.

Their efforts, and that of their staffs have been indispensable in helping to reach the compromise reflected in the amendments adopted by the Senate today.

Great credit also is due to Senator Ribicoff, Senator Javits and the other cosponsors of this legislation as well as to all the members of the Committee on Government Operations. Without their many valuable contributions, we would have been unable to develop the sensible bill that the committee reported unanimously to the Senate.

Finally, the Committee wishes to express appreciation for the valuable time and effort devoted to the drafting of this legislation by Mr. Bill Ticer, in the office of the Senate Legislative Counsel.

Mr. President, I am pleased to note that the compromise which has been reached between the Senate and the House on this privacy legislation will provide for the establishment of a Privacy Protection Study Commission. While the scope of the commission's authority is not as broad as we had sought in the Senate bill, it should serve as an important function in providing the President and the Congress with the kind and caliber of information about problems related to privacy in the public and private sectors which are needed to make informed decisions.

I believe that this bill also strengthens the ability of the individual to enforce the rights granted to him under this act from the provisions which were contained in the House measure.

Finally the compromise bill contains the minimum recommendations made for protecting privacy and for establishing rules of due process for the Government's use of computer technology for personal data systems.

It is in keeping with the recommendation of the Committee on Government Operations which stated the purpose of the Senate bill is to:

Promote government respect for the privacy of citizens by requiring all departments and agencies of the executive branch and their employees to observe certain constitutional rules in the computerizing, collection, management, use and disclosure of personal information about individuals.

It is to promote accountability, responsibility, legislative oversight, and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal Government and with respect to all of its other manual or mechanized files.

It is designed to prevent the kind of illegal, unwise, over-broad, investigation and record surveillance or law-abiding citizens which has resulted in recent years from actions of some over-zealous investigators, from the curiosity of some government administrators, and from the wrongful disclosure and use of personal files held by Federal agencies.

It is to prevent the secret gathering of information or the creation of secret information systems or data banks on Americans by employees of the departments and agencies of the Executive branch.

It is designed to set in motion a long-overdue evaluation of the needs of the Federal government to acquire and retain personal information on Americans, by requiring stricter review within agencies or criteria for collection and retention of such information.

It is also to promote observance of valued principles of fairness and individual privacy by those who develop, operate and administer other major institutional and organizational data banks of government and society.

While this is a momentous day for the Senate, it's work in the field of privacy is not completed with the adoption of this legislation. It will require aggressive oversight by the Committee on Government Operations, and I would hope that Senator Muskie through his Subcommittee on Intergovernmental Relations, and that Senator Percy, as the ranking minority member of the Committee on Government Operations, will continue to exercise their leadership in this regard.

STATEMENT TO MEMBERS OF THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

Mr. ERVIN. Mr. President, when the Senate approved S. 3418 in November, I paid tribute to the contributions of the members and the staff of the Government Operations Committee and to the staffs of the members of the Committee who had worked on the bill.

I wish to acknowledge also the valuable contributions of the Committee's special consultant, Professor Alan F. Westin of Columbia University, whose testimony in June and expert counsel through the summer provided the basis for policy judgments and for detailed amendment of the bill in order that a workable proposal could be reported to the Senate. Professor Christopher Pyle of the John Jay College of Criminal Justice in New York, also rendered valuable assistance to the Committee, as he has during his service as a consultant of the Constitutional Rights Subcommittee.

Much credit is also due to Lawrence Baakir, former chief counsel of the Constitutional Rights Subcommittee, Mark Gitenstein, present chief Counsel of the Subcommittee, Irene Margolis, Dorothy Glanzer and the rest of the Subcommittee staff who helped immeasurably in the development of the bill and report during the joint hearings and study.

Furthermore, no person who has walked on Capitol Hill merits greater commendation in this connection than Marcia MacNaughton, who served for a substantial time on the staff of the Subcommittee on Constitutional Rights and made herself most knowledgeable in respect to privacy and the threats to it. During past months she left the academic world temporarily to aid the Senate Committee on Government Operations in the drafting of S. 3418.

I believe the comprehensive hearings and studies of the Constitutional Rights Subcommittee have helped to provide the Congress with an excellent basis for this and other needed legislation in years to come. I hope the many published volumes of the result of the Subcommittee's work on privacy, computers and data banks will aid those working on this subject in the future. The members who serve on that Subcommittee have made many contributions to the protection of privacy by their sponsorship of legislation and their support and participation of the investigations and reports which were needed to draft legislation. They have also provided the Executive Branch with the background and information for reports and action to protect privacy and I hope officials in all federal departments and agencies will continue to take advantage of this research and this documentation of public concern over governmental incursion on individual freedoms.

Since the Senate and the House passed their respective privacy bills, Jim Davidson has labored tirelessly to reconcile their varying provisions and thus make the enactment of legislation to protect the rights of privacy of Americans possible. I will always be grateful to him for his most helpful assistance to me.

Mr. ERVIN. Mr. President, I would urge all Members of the Senate to support these amendments with my assurance that I have been informed by the House that the House will immediately take them and send the bill to the White House and we will have, for the first time in the history of our Nation, some effective privacy legislation.

Mr. PERCY. Mr. President, the compromise privacy bill we bring before the Senate today is a remarkable achievement. It marks the culmination of more than 10 years of concern and attention by the Congress to the fundamental issue of personal privacy. It represents the continuing efforts by the distinguished senior Senator from North Carolina (Mr. ERVIN) to cultivate that concern and I believe this legislation is a fine tribute to Senator ERVIN's work.

I would like to strongly commend the staff of the Government Operations Com-

mittee in their efforts to produce a compromise with the House. Their diligent efforts have been quite crucial to the successful resolution of extremely difficult policy differences. In this regard, I would like to give a special commendation and extend my appreciation to Mr. Bill Ticer, office of the Senate Legislative Counsel, for his dedicated assistance to the committee staff during the past 6 months. I understand that his participation was of immense value in clarifying difficult portions of the legislation.

I also commend Congressman MOORHEAD of Pennsylvania, Congressman ERLBORN, and Congressman GOLDWATER for their diligent efforts in connection with this legislation.

I am pleased to note that the compromise which has been reached does include a provision for a 2-year Privacy Protection Study Commission. While this Commission does not retain some of the enforcement powers afforded to it in the Senate-passed bill, S. 3418, I believe that it is certainly equipped to perform the functions intended by the Senate. The Commission will be responsible for assembling experts in the fields of computer science, law, social sciences, business, and Government to study and recommend solutions to privacy problems not adequately addressed by this bill. I believe that the Commission will serve to keep focused attention on this important issue of public policy so that Federal agencies, State and local governments, and private organizations will continue to implement the basic principles of fair treatment for personal data contained in this bill.

I am pleased that the compromise bill contains the provision, introduced by Senator GOLDWATER and myself, to limit abuses of the social security number. I look forward to a more final solution to the problems associated with this number, which is widely used as a universal identifier in this country. The Privacy Protection Study Commission will study the problem and bring back to the Congress policy recommendations on this matter.

Finally, I am pleased that Congress has acted with authority to establish, across the board in the Federal Government, fundamental protections of personal privacy. The challenge now rests with the Federal agencies to adopt regulations and implement procedures to carry out the intent of this statute. We intend to work with the agencies and we hope that they will cooperate fully, in return, with the Government Operations Committees of both Houses, in their oversight capacity, and with the Privacy Protection Study Commission, in its study capacity.

Mr. MUSKIE. Mr. President, this is a momentous day for the Senate and for every citizen of this country on whom the Government maintains a record.

The compromise agreement which has been worked out between the Senate and the House under the able leadership of the chairman of the Committee on Government Operations, Mr. ERVIN, represents the first major assault on the invasion of privacy in recent decades.

Mr. President, I would like to note the outstanding work in the development of

this bill by Mr. James H. Davidson, of the staff of my Subcommittee on Intergovernmental Relations, who has spent countless hours working on this legislation.

The passage of this legislation will rightfully earn for this Congress the reputation as the Privacy Congress.

While the courts have begun to recognize the capacity and the practices of the government to invade the privacy of its citizens, it is the responsibility of the Congress to develop the legislative protection against those invasions.

The Federal Privacy Act draws upon the constitutional and judicial recognition accorded to the right of privacy and translates it into a system of procedural and substantive safeguards against obtrusive Government information-gathering practices.

Until now we have allowed technological advances in Federal recordkeeping to outpace our efforts to control and safeguard the information we have collected. This act would restore balance against those advances by adding new protections for every citizen.

I am pleased to note that this act has developed an important balance between the rights of privacy of each of our citizens and the public need for disclosure of Government materials under the Freedom of Information Act.

Mr. President, this legislation incorporates fundamental rights of fair information practices into Federal information systems. It is an important beginning. And I hope to be able to follow the implementation of this act in the next Congress through the work of my Subcommittee on Intergovernmental Relations.

Mr. BROCK. Will the Senator yield?

Mr. ERVIN. I yield to the Senator from Tennessee.

Mr. BROCK. Mr. President, may I take a moment to express my gratitude to the Senator from North Carolina for his leadership in a matter in which I have had, as so many others have had, a great, continuing, and growing concern. The privacy bill is a much-needed piece of reform legislation which I am proud to have sponsored.

There is no question about the abuse of personal privacy in this country, and it is growing at a geometric rate each year. I understand, for example, that it is presently possible to have every telephone in America bugged.

Privacy is not a privilege, it is a basic right, a fundamental freedom which is deeply rooted in our American heritage. It is the ability to be secure in our homes, persons, and papers. We simply must take firm and specific action to protect the people of this Nation from the erosion of their personal liberties.

This bill, which addresses itself to the use and abuse of Federal data banks, establishes several basic standards. First, only relevant personal information can be collected, and the individual must be informed as to which data is required, which is voluntary, why it is needed, and under which authority. Second, only timely data may be maintained and disseminated, and access to, and security

of, the data must be regulated. Additionally, the nature of all data banks must be announced. Individuals will have access to inspect their records and must be told the source of the data and how it is used. Finally, information challenged by an individual must be reinvestigated and, where proper, modified or corrected.

I personally want to express my great debt to the Senator from North Carolina for his efforts to remedy this problem.

We did have differences with the House, but the compromise is an effort to deal with those differences in a very frank and very healthy way.

I appreciate the result of the labors of the gentleman and I want him to know it.

Mr. ERVIN. I thank my friend from Tennessee and want to commend him for the work he did in the Government Operations Committee in this legislation.

Mr. President, I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ERVIN. I yield the floor.

Mr. HRUSKA. Mr. President.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, I yield to the Senator from West Virginia, reserving my right to the floor, for a brief statement.

AMENDMENT OF THE SOLID WASTE DISPOSAL ACT

Mr. RANDOLPH. Mr. President, I report from the Committee on Public Works H.R. 16045, and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 16045) to amend the Solid Waste Disposal Act to authorize appropriations for fiscal years 1975 and 1976 and to make certain technical and conforming changes, reported with an amendment.

The PRESIDING OFFICER. Is there objection to the consideration of the bill. There being no objection, the Senate proceeded to consider the bill (H.R. 16045) which had been reported from the Committee on Public Works with an amendment to strike out all after the enacting clause and insert:

That paragraph (2) of subsection (a) of section 216 of the Solid Waste Disposal Act, as amended (87 Stat. 11), is amended by striking "and not to exceed \$76,000,000 for the fiscal year ending June 30, 1974," and inserting in lieu thereof "not to exceed \$76,000,000 for the fiscal year ending June 30, 1974, and not to exceed \$78,000,000 for the fiscal year ending June 30, 1975."

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read: "To amend the Solid Waste Disposal Act

to authorize appropriations for fiscal year 1975."

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Will the Senator from Nebraska yield for 30 seconds without losing his right to the floor?

Mr. HRUSKA. I am happy to yield.

Mr. ROBERT C. BYRD. With the understanding his remarks not be interrupted in the Record.

Mr. President, for the information of the Senators, following this rollcall, I would anticipate another measure that will be coming up that would very likely generate another rollcall.

I thank the Senator.

PRIVACY ACT OF 1974

The Senate continued with the consideration of the message from the House of Representatives on the bill (S. 3418) to establish a Privacy Protection Commission, to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information, concerning individuals, and for other purposes.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. HRUSKA. Mr. President, I rise to suggest that the consideration of the instant bill, S. 3418, pursuant to the motion of the Senator from North Carolina, is not exactly in keeping with the better traditions of this body regarding consideration of legislative of this gravity. I am not going to take very long, but I would like to recite briefly the chronology of this legislation and what we are doing here today.

Last month, Mr. President, S. 3418 was approved by this body and sent to the other body. The bill, incidentally, as passed by the Senate, was about 40 printed pages in length.

The House also passed a measure, at approximately the same time, H.R. 16373, which dealt with the question of privacy, individuals' records. While many provisions of the House and Senate bill were similar, the Senate version contained provisions establishing a privacy commission, with far reaching powers, and providing extensive coverage of law enforcement records, features not found in the House bill.

The other body took the Senate bill S. 3418, and, upon consideration thereof, voted to strike all but the enacting clause and insert entirely in place therein the text of H.R. 16373, which consisted of approximately 20 printed pages. Apparently, the members of the Senate Government Operations Committee were displeased with the House version. There was contact established between the staff of the Government Operations Committee of the Senate and the staff of the Government Operations Committee of the House. There emanated therefrom, Mr. President, the text and the substance of the motion now pending by way of an amendment to the House bill, which I understand was completed yesterday.

This text, Mr. President, was submitted to my office less than 24 hours ago. It consists of approximately 40 pages of typewritten material. It is in many respects from the bill as passed by the Senate in the original instance. And it is different than the text of the bill that was approved by the other body.

In addition to that text, I was furnished by the very courteous and distinguished Senator from North Carolina with a copy of his remarks, consisting of an analysis of House and Senate compromise amendments to the Federal Privacy Act.

Let me suggest, Mr. President, that this occurred about 24 hours ago. I believe I received these remarks probably at 4 o'clock yesterday afternoon and the actual text of the amendment shortly after 6 p.m.

We adjourned the Senate, Mr. President, at about 8:40 p.m. yesterday. We convened at 9:30, as I remember it. I have been in committee most of the day. I started my first committee meeting at 9:30 this morning.

I know all of my colleagues have been very busy in the later part of this session, in the closing hours of this session.

I make no apology for the fact that I did not have time to read and to study this bill, nor the remarks of the Senator from North Carolina. I did impose upon my staff for the consumption on their part of a little midnight oil. I find, Mr. President, it is not quite as easy to explain the lack of difference between the House bill and the compromise bill as we might imagine.

There are some things that are of real substance. There are some items that are of very substantial difference; and, in my judgment, some items, on the basis of this staff analysis, that would bear close study and scrutiny, and which should receive a little more deliberate treatment than a mere consideration of the motion of amendment as proposed, and which we are considering now.

Let me suggest, Mr. President, first of all there is the suggestion, and there is the representation made, that the law enforcement files are exempted. Of course, that was one of our original objections to the bill as approved by the Senate. When I say "our" I mean those who are interested with me in the preservation of the integrity of law enforcement files, particularly the investigatory files, and to prevent a compromise thereof.

As I suggested at that time, the area of law enforcement files is of such complexity that it should not be dealt with on the same terms as civil records. I believe it can be readily understood that criminal justice or law enforcement information gives rise to problems requiring treatment different from that of information used to carry out the social, health, or money benefit programs in which the Government may be involved. Law enforcement records should be treated in separate legislation.

The Senate Constitutional Rights Subcommittee presently has such legislation before it, S. 2963 and S. 2964. Many hours of hearings and research have gone into perfecting the provisions

of this legislation in order to strike a proper and equitable balance between the individual's rights to privacy and society's interest in receiving good and effective law enforcement.

This legislation, represented by S. 2963 and S. 2964, is well along and near resolution. It is expected that similar legislation will be reported to the Senate floor early next year. It is my understanding that the Members in the House similarly expect to act on legislation dealing with law enforcement files early in the next Congress. It is further my understanding that this was the reason that H.R. 16373 contained an exemption from most of its provisions for criminal law enforcement files and records, an exemption which I found acceptable.

The staff compromise we have before us in the form of the amendment in question, however, narrows the law enforcement exemption, by making additional provisions of the bill applicable to law enforcement.

For example, the requirement that an accounting of all disclosures of a record be kept for a period of 5 years, "or for the life of the record, whichever is the longer" would now be applied to law enforcement files.

It should be noted that the statute of limitations for civil suits related to improperly disclosed records is only 2 years. The provision that all future disclosures of the record be accompanied by notice of disputes as to its accuracy is also applied to law enforcement records.

Similarly, law enforcement would be covered by the requirement that proposed rulemaking hearings be held with respect to a statement of the routine uses to which records would be subject.

The expanded coverage of the law enforcement files is objectionable as a matter of principle, and may raise serious practical problems of which we may be unaware after only a brief study of the amendment.

Mr. PERCY. Would my distinguished colleague mind just a brief comment? If the distinguished Senator from Nebraska has finished the history of what happened on this legislation, I think for purposes of accuracy it would be well to make one insertion.

Mr. HRUSKA. I will yield briefly for that purpose. I do not want to detain the Senate too long. I shall cite one other example of detriment in the proposed amendment. Then I shall put the rest of this statement into the Record. If it is a brief comment, I will be happy to yield.

Mr. PERCY. I very much appreciate the deep interest that our distinguished colleague has taken in this legislation.

It would be, I believe, unfair to the Senate to assume, however, that what has resulted is a result only of staff discussions between the House and Senate. Obviously, on this legislation, as in most legislation, staff has done a great deal of work. But we cannot overlook the fact that Senator ERVIN and myself, as the chairman and the ranking minority member of the Senate Government Operations Committee, and Congressman MOORHEAD of Pennsylvania, and Congressman ERLBORN, of Illinois, as the House Foreign Operations and Govern-

ment Information Subcommittee chairman and the ranking minority member of the House Government Operations Committee, met together for a very extended session to discuss our respective bills.

We worked out compromises. We negotiated differences. We came to an accord, and we put the stamp of approval of two Senators and two Congressmen, representing the chairmen and ranking members of the respective committees, before it was brought before the Senate today.

I believe that this one additional point would update and complete the historical account of this legislation up to this point.

I thank my distinguished colleague. Mr. HRUSKA. I am happy to accept that supplement to the description of the history of this bill, Mr. President. It was not my intention to exclude from the consideration of the amendment before us the participation by members of the committee. But the bulk of the work, I am confident, was done by the staff. Many of the changes pertaining to law enforcement may have been inadvertently included with a full realization of their total effect.

Mr. President, I am just going to outline one other change. That has to do with the access to law enforcement records intelligence information by the privacy commission. The compromise with which we are now confronted would create a seven-member study commission with a broad mandate to examine privacy considerations as applied, Mr. President, to Federal, State, and private records.

The study commission would have full access to all information relating to the performance of their function, and it could issue subpoenas as to enforce its request for information. I am concerned, Mr. President, that individual's rights may be offended by fishing expeditions by the commission into the raw background files maintained by the Government and into other particularly sensitive law enforcement and intelligence records.

I feel the compromise gives the commission too broad authority to examine Government records under the language in the bill.

I ask unanimous consent, Mr. President, that this memorandum, which was prepared by staff and from which I have quoted, and which I have checked with the text of the bill and its proposed compromise, be printed in the Record at this point.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

MEMORANDUM

The "final" staff compromise which is now before the Senate presents real problems for law enforcement generally.

Exemption of law enforcement files. H.R. 16373 contained an exemption from most of its provisions for criminal law enforcement files and records. It was acceptable in this regard. The staff compromise narrows the law enforcement exemption, thus making additional provisions of the bill applicable to law enforcement. For example, the requirement that an accounting of all disclosures of a record be kept for a period of

five years "or the life of the record which ever is longer" would now be applied to law enforcement files. (Note that the statute of limitations for civil suits relating to improperly disclosed records is only two years). The provision that all future disclosures of the record be accompanied by notice of disputes as to its accuracy is also applied to law enforcement records. Compare p. 24 with page 9. Similarly, law enforcement would be covered by the requirement that proposed rule making hearings be held with respect to a statement of the "routine uses" to which such records would be subject, p. 17. The expanded coverage of law enforcement files is objectionable as a matter of principle and may raise serious practical problems.

New provisions concerning law enforcement. The staff compromise defines records as including not only collections of information about individuals but also an "item" of information about an individual. The intent of this change is not clear but it could be read so broadly as to include any single piece of paper bearing an individual's name within the meaning of record even though it may be filed as part of an investigatory file on a corporation or on some other individual. This would, among other things, require that annual notice of such "items" be published in the *Federal Register*. See § 3(a) (4) [p. 5].

The new definition of record also includes a reference to fingerprints, voice prints and photographs. The same reference is not included, however, in the description of those law enforcement files which may be exempted from provisions of the bill such as individual access to records or limitations on disclosure without the individual's consent. While it would be ludicrous to interpret the bill to require a fugitive's consent before his photograph is displayed on a wanted poster, the bill literally has this effect. Moreover, it may be read to permit individual access to photographs or voice prints in an investigatory file even though access to the file itself is not permitted by the bill. 3(a) (4) [p. 5].

"Routine" exchanges of information among government agencies—see 3(a) (7) [p. 6] 3(b) (3) [p. 6]—are permitted by the bill so long as annual notice describing such routine exchanges is published. We were successful in obtaining a fuller explanation of routine exchange in the House which would be helpful to law enforcement. The bill, however, has added a definition of "routine use" which may present problems for law enforcement. "Routine" use is defined as that which is compatible with the purpose for which the information was originally collected. There may be numerous exchanges of information with the FBI that are now undertaken by non-law enforcement agencies which would not fall within the scope of this definition, for example, information concerning possible civil disturbance activities. If such exchanges do not fall within the definition of routine use then it would be necessary to secure the consent of the individual before furnishing it to the FBI or it would be necessary for the Director to make a written request for the information.

Since the information is of the sort normally brought to our attention only when it is voluntarily provided to us, the provision for requesting such records is virtually meaningless.

Among the new provisions added to the staff compromise is a requirement that before disseminating a record the agency must assure that the record is accurate, complete, timely and relevant. No standard is provided as to the proper application of these terms. The provision is applicable to law enforcement files as well as all other records. It would, of course, put the burden on the Identification Division to assure the completeness and relevance, as well as accuracy, of all rap sheets before dissemination. Moreover, it would appear to require

that investigatory files be accurate, complete, timely and relevant before they are disseminated regardless of the purpose of the dissemination. Presumably this would even apply to old investigatory records made available pursuant to the historic records policy adopted under the Freedom of Information Act.—See § 3(e) (6) p. 16.

Access to law enforcement records. The staff compromise would create a seven member study commission with a broad mandate to examine privacy considerations as applied to federal, state and private records. The study commission would have "full access to all information relating to the performance of their functions" and could issue subpoenas to enforce its requests for information. This could include requests for "raw files" and other sensitive law enforcement and intelligence records. The staff compromise, we feel, gives the Commission too broad authority to examine government records. [p. 38] § 5(e) (1).

Civil law enforcement problems. The bill requires that whenever an agency seeks information from an individual it must inform him of the source of its authority to seek the information, the purpose for which it is sought, routine uses that may be made of it, and the effects of not providing the information. Criminal law enforcement is exempt from these provisions but civil law enforcement is not. In certain cases such as civil frauds, civil rights investigations, antitrust investigations, etc. this may produce an inhibiting effect on a potential witness. (There is also the incidental burden of including all of this information on all applicant forms as well.)

In a related vein, each agency is required to publish annually a description of its records systems. Except in the case of law enforcement, national defense, and similar files, a description of the "categories of sources" is to be included in the description. This too may present difficulties with respect to civil rights, fraud, and antitrust investigations where sources may require as much protection as they do in criminal cases.

An agency would be required to serve notice on an individual when a record pertaining to the individual is to be disclosed subject to "compulsory legal process." While law enforcement records would be exempt from this requirement, civil investigatory files would not be. Again this may present particular problems with respect to those civil actions which are quasi-criminal in nature. Moreover, it places an enormous burden on agencies and may, through motions to quash and similar interventions, seriously delay civil litigation.

Relationship to Freedom of Information Act. The Staff draft expressly provides that nothing in the Freedom of Information Act permits withholding a record from the subject of that record. This presents no serious problems since the bill itself permits withholding investigatory and similar files from the individual. The bill also provides, however, that disclosure is not permitted without an individual's consent unless disclosure would be required under FOI. Since the FOI Act itself authorizes the refusal of disclosure where this would constitute an "unwarranted invasion of privacy" the privacy bill's disclaimer of any intent to affect FOI is circular. In the face of the disclaimer, the government's efforts to mesh the two bills when faced with litigation over the nondisclosure of records to protect privacy may meet considerable difficulty.

Mr. HRUSKA. Mr. President, the motion before us and the amendment before us may be a good one. It may have merit. Maybe that would be the ultimate result of the action taken by the Senate.

As I indicated when S. 3418 was before us last month, Mr. President, I share the

objective of my good friend from North Carolina to protect Americans in their right to privacy. The declared purpose of this bill are desirable and worthy. It is, Mr. President, only some of the specific features of the bill, which I have mentioned briefly, with which I have question.

I do not know how many copies of this 40-page typewritten manuscript which contains the compromise measure have been made, or how many are available. As I indicated, I did not get one in my office until 6:30 last night. I have not made inquiry as to its distribution. It just seems to me that notwithstanding the lateness of this session, this subject and this measure are entitled to a little more deliberate, proper, and complete consideration by the Senate. It is an important subject and I hope that in our rush to enact this legislation that we are not inadvertently including provisions that will trouble us later.

I have no disposition to get into the matter of proposing an amendment at this time. If I did, Mr. President, I would propose an amendment by way of a substitute to reinstate, a substitute for the Ervin amendment, by way of a substitute to that, the text of the bill as originally passed by the House, which was understandable, which had been closely studied; and with which we have had some familiarity. I shall not do that, because to do that at this late hour would be putting the Senate in the same position with regard to that substitute measure that it is placed in with regard to the principal amendment—to wit, we would not have that discretion and we would not have that amplification upon the content of the amendment, and that would not be fair.

So I submit again, Mr. President, that it is a mistake to proceed at this late hour with the consideration of the pending amendment. It is my hope that it will not be approved. If the amendment before us does not succeed, we will have before the House version of the privacy bill which I find an extremely meritorious measure. It will readily achieve the objectives of the protection of privacy we seek and would receive my strong support.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Nevada (Mr. BIBLE), the Senator from Alaska (Mr. GRAVEL), the Senator from Rhode Island (Mr. PASTORE), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Arkansas (Mr. McCLELLAN), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. TALMADGE) are necessarily absent.

I further announce that the Senator from Montana (Mr. MANSFIELD) is absent on official business.

I also announce that the Senator from Maine (Mr. HATHAWAY) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The result was announced—yeas 77, nays 8, as follows:

[No. 567 Leg.]

YEAS—77

Abourezk	Goldwater	Moss
Allen	Griffin	Muskie
Baker	Hansen	Nelson
Bartlett	Hart	Nunn
Bayh	Hartke	Packwood
Beall	Haskell	Pearson
Biden	Hatfield	Pell
Brock	Helms	Percy
Brooke	Hollings	Proxmire
Buckley	Huddleston	Randolph
Burdick	Hughes	Roth
Byrd	Humphrey	Schweiker
Harry F., Jr.	Inouye	Scott, Hugh
Byrd, Robert C.	Jackson	Scott
Cannon	Javits	William L.
Case	Kennedy	Sparkman
Chiles	Long	Stafford
Church	Magnuson	Stennis
Clark	Mathias	Stevens
Cook	McClure	Stevenson
Dole	McGee	Symington
Domenici	McGovern	Thurmond
Dominick	McIntyre	Tunney
Eagleton	Metcalfe	Weicker
Ervin	Metzenbaum	Williams
Fannin	Mondale	
Fong	Montoya	

NAYS—8

Aiken	Gurney	Tower
Cotton	Hruska	Young
Curtis	Taft	

NOT VOTING—15

Bellmon	Eastland	Mansfield
Bennett	Fulbright	McClellan
Bentsen	Gravel	Pastore
Bible	Hathaway	Ribicoff
Cranston	Johnston	Talmadge

So Mr. ERVIN's motion to concur in the House amendment with amendments was agreed to.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the Senate amendments were agreed to.

Mr. CHURCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Washington (Mr. JACKSON) may proceed for 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOWELL HISTORIC CANAL DISTRICT

Mr. JACKSON. Mr. President, I move that the Committee on Interior and Insular Affairs be discharged from the consideration of H.R. 14689, and that it be laid before the Senate for immediate consideration. Mr. President, this matter has been cleared with the minority. It is a very minor bill. Both Senators from Massachusetts have expressed their interest in it.

The motion was agreed to.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 14689) to provide for a plan for the preservation, interpretation, development, and use of the historic, cultural, and

architectural resources of the Lowell Historic Canal District in Lowell, Massachusetts, and for other purposes.

Mr. JACKSON. Mr. President, this is a House-passed bill which calls for the expenditure of no more than \$150,000 to study and prepare a plan for the historic preservation of the Lowell Canal District in Lowell, Mass.

I have cleared the matter with the minority. Both Senators from Massachusetts have expressed a strong interest in this legislation, and I hope that the Senate will take appropriate action.

Mr. KENNEDY. Mr. President, I rise in support of H.R. 14689, the Lowell Historic Canal District bill. The Lowell area has been one of the hardest hit in the Nation in our deepening recession. This bill will provide a significant step toward restoring Lowell to its potential place in our economy, while helping restore Lowell's historic significance to the State of Massachusetts and to the Nation at large.

This bill provides \$150,000 for the development of a plan for the preservation, development, interpretation, and use of the historic, cultural, and architectural resources of Lowell, Mass. The nine-member Commission, composed of private citizens as well as government officials, is to produce a plan for protecting and restoring the historic properties in Lowell and make specific recommendations for its implementation. The completed plan is to be submitted to Congress within 2 years. Further congressional action will then be necessary to authorize any Federal commitment in implementing the recommendations.

Lowell, Mass., represents an important and often neglected chapter of American history. The coming of the industrial revolution, with all its concomitant social and economic effects, is the story to be told here.

The falls of the Merrimack River attracted the attention of the pioneering New England industrialists in the early 19th century. They realized the power of the water falling through the locks of a transportation canal which bypassed the rapids could be harnessed to drive the textile machinery that was then being developed. The Merrimack Manufacturing Co. pioneered the growth of Lowell, improving the canal and constructing the first of the major industries to locate in what was then a remote and thinly settled area.

Of signal importance in this process was that the industrialists, recognizing the need for a stable labor source as well as the water power Lowell had to offer, developed the area as a planned industrial community. Their intent was to dispel the fears of the evils of industrial change which had grown out of the early factory complexes in England. To accomplish this, the companies constructed a model community in which even the off-duty hours of employees were supervised.

The early years of this industrial development saw Lowell hailed as an industrial utopia. The management of the town by the companies, while classified by modern standards as paternalistic, represented a major departure from many of the exploitative aspects of the

industrial growth of that era. Lowell drew admiring visitors from both the United States and abroad, and the area drew wide attention for its success in combining industrial and social values.

The experiment that was Lowell at last began to change. Following the Civil War, increased competition, lower labor costs in other areas, and poor management all played a part in leading to the decline in prominence of the Lowell area.

Now there is widespread support from the citizens of Lowell as well as historians and other interested parties for preserving and restoring the structures and areas which interpret the significance of Lowell. Perhaps the single event which catalyzed this interest was the demolishing of the original Merrimack Manufacturing Co. mill to make way for a high rise structure. It became apparent that without some organized approach, the important reminders of Lowell as a part of our growth as a Nation will disappear through attrition. H.R. 14689 is the vehicle through which a plan that takes account of the history and the present and future needs of this area can be developed.

In addition to the \$150,000 provided in this bill, it is gratifying to know that the State of Massachusetts has pledged \$9,700,000 in further support of the project associated with this legislation.

Mr. President, I wish to thank the Senator from Washington (Mr. JACKSON) the chairman of the Interior Committee and the Senator from Nevada (Mr. BRIDGES) the chairman of the subcommittee for their support and aid in steering this legislation to consideration by the Senate.

This bill will help restore Lowell's place in the Nation's history and help strengthen its present economic situation. I urge the Senate to pass this bill.

Mr. BROOKE. Mr. President, today is a day the citizens of Lowell, Mass., have long been waiting for. The city of Lowell is one of America's oldest industrial centers and possesses what is probably the finest set of working canals and mills in this country. The Senate action today has all but insured that much of this great city will be preserved for all Americans as an example of the kind of industrial center that made this country what it is today.

This bill sets in motion a study which will decide exactly what the best course of preservation should be for this great city. It will only cost \$150,000 and in return the people of this country will be able to see for themselves what industrial America looked like in the 19th century.

I commend Senator JACKSON and the Senate Interior and Insular Affairs Committee for their prompt action on this bill and I commend my colleagues for their support. I would also like to take this opportunity to commend the diligent work of Representative PAUL CROWIN. He has skillfully managed this measure through the House and deserves much of the credit for its success in this session of the Congress. We have insured that future generations will have a firsthand glimpse of one of American history's important chapters.

TRACT NUMBERED 6

The reserved mineral deposits, including the right to prospect for and remove the same, in and under lands described as the south half of lot 2 (southwest quarter northwest quarter), and that part of the southwest quarter southeast quarter northwest quarter lying west of the centerline of Oklahoma State Highway Numbered 18 and adjacent to the south half of said lot 2, all in section 31; township 10 north, range 4 east, Indian meridian, Pottawatomie County, Oklahoma, containing 19.87 acres, more or less, which lands were previously conveyed to Pottawatomie County, Oklahoma, by quitclaim deed dated December 17, 1959, pursuant to the Act of June 4, 1953 (87 Stat. 71; 25 U.S.C. 293a), said deed appearing of record in Pottawatomie County, Oklahoma, in deed book 174 at page 367 of the land records of said county.

TRACT NUMBERED 7

That part of lot 1 (northwest quarter of northwest quarter) and north half of lot 2 (north half of southwest quarter of northwest quarter) and the part of the north half of the southeast quarter of the northwest quarter lying west of the east right-of-way line of Oklahoma State Highway Numbered 18, all in section 31, township 10 north, range 4 east of the Indian meridian, Pottawatomie County, Oklahoma, containing 57.99 acres, more or less, subject to the right of the Absentee Shawnee Tribe of Indians of Oklahoma, the Sac and Fox Tribe of Indians of Oklahoma, the Kickapoo Tribe of Indians of Oklahoma, and the Iowa Tribe of Indians of Oklahoma to use the Potawatomi community house that may be constructed and maintained thereon.

Amend the title so as to read: "An Act to authorize the conveyance of certain lands to the United States in trust for the Citizen Band of Potawatomi Indians."

Mr. BARTLETT. Mr. President, while the House has amended S. 3359, the change is technical in nature and does not detract from the version of the bill as passed by the Senate. The amendment is acceptable to both the majority and minority sides of the aisle.

Therefore, Mr. President, I move that the Senate concur in the amendment of the House to S. 3359.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oklahoma (Mr. BARTLETT).

The motion was agreed to.

Mr. BARTLETT. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from Minnesota would allow me, I would like to suggest that the distinguished Senator from North Carolina be recognized at this time.

FEDERAL PRIVACY ACT

Mr. ERVIN. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3418.

The PRESIDING OFFICER (Mr. NUNN) laid before the Senate the amendments of the House of Representatives to the amendments of the Senate to the amendments of the House to the bill (S. 3418) to establish a Privacy Protection Commission, to provide manage-

ment systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes as follows:

(1) Page 16, strike out lines 1 through 10, inclusive, and insert:

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(2) Page 24, strike out all after line 10 over to and including line 24 on page 25, and insert:

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (1) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section."

(3) Page 42, strike out lines 11 through 21, and insert:

"(h) (1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

Mr. ERVIN. Mr. President, the House amendments to the Senate amendments to the House amendments are merely technical in nature and there is no opposition to them, so far as I can find.

I would therefore move that the Senate concur in the House amendments to the Senate amendments to the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from North Carolina (Mr. ERVIN).

The motion was agreed to.

ALLEVIATION OF SUFFERING FROM HUNGER AND MALNUTRITION—S. 2792

Mr. HUMPHREY. Mr. President, there is at the desk a report from the Committee on Agriculture and Forestry relating to the modification of Public Law 480, a bill that was unanimously reported by the Committee on Agriculture and Forestry, which has the support of the President and the Office of Management and Budget.

I ask unanimous consent for the immediate consideration of the bill.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

There being no objection, the Senate proceeded to consider the bill (S. 2792) to amend the Agricultural Trade Development and Assistance Act of 1954 to provide the United States with the flexibility with which to participate in efforts to alleviate the suffering and human misery of hunger and malnutrition which had been reported from the Committee on Agriculture and Forestry with an amendment to strike out all after the enacting clause and insert:

PUBLIC LAW 480

SECTION 1. The last sentence of section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, is amended by striking out the period and inserting in lieu thereof a comma and the following: "unless the Secretary determines that some part of the exportable supply should be used to carry out the national interest and humanitarian objectives of this Act: Provided, That no commodity may be made available for disposition under this Act to any country in any fiscal year unless the Secretary determines, and certifies such determination to the Congress, that all domestic feeding programs, including, but not limited to, the programs provided for under the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended, will be provided in such fiscal year with the same types and kinds of agricultural commodities and in the same or greater quantities at which each such type and kind of commodity was provided for such programs during the fiscal year ending June 30, 1974, and in determining the types, kinds, and quantities of commodities made available for any such program during the fiscal year ending June 30, 1974, the Secretary shall include commodities made available from every source, including, but not limited to, those made available under section 415 of the Agricultural Act of 1949, those made available with funds from section 32 of August 24, 1935, and those made with funds of the Commodity Credit Corporation as authorized by section 7 of the Food and Agriculture Act of 1965."

FOOD STAMP ACT

SEC. 2. Section 4(a) of the Food Act of 1964, as amended, is amended by striking out the period at the end thereof and adding the following: "Provided, That effective March 1, 1975, no less than 20 per

or the Commission, and may be served by such person or persons as may be designated by such Chairman or member. The Chairman of the Commission or any member thereof may administer oaths or affirmations to witnesses.

(b) The provisions of sections 192 through 194, inclusive, of title 2, United States Code, shall apply in the case of any failure of any witness to comply with any subpoena when summoned under this section.

(c) The Commission is authorized to secure from any department, agency, or instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this resolution and each such department, agency, or instrumentality is authorized and directed to furnish such information to the Commission and to conduct such studies and surveys as may be requested by the Chairman or the Vice Chairman when acting as Chairman.

(d) If the Commission requires of any witness or of any Government agency the production of any materials which have theretofore been submitted to a Government agency on a confidential basis, and the confidentiality of those materials is protected by statute, the material so produced shall be held in confidence by the Commission.

INVESTIGATING TASK FORCES

SEC. 4. (a) As soon as practicable after the organization of the Commission, the Commission shall, for the purpose of gathering facts and other information necessary to carry out its responsibilities pursuant to section 2 of this resolution, appoint investigating task forces to be composed of three persons, a majority of whom shall be of Indian descent. Such task forces shall be appointed and directed to make preliminary investigations and studies in the various areas of Indian affairs, including, but not limited to—

- (1) trust responsibility and Federal-Indian relationship, including treaty review;
- (2) tribal government;
- (3) Federal administration and structure of Indian affairs;
- (4) Federal, State, and tribal jurisdiction;
- (5) Indian education;
- (6) Indian health;
- (7) reservation development;
- (8) urban, rural nonreservation, terminated, and nonfederally recognized Indians; and
- (9) Indian law revision, consolidation, and codification.

(b) (i) Such task forces shall have such powers and authorities, in carrying out their responsibilities, as shall be conferred upon them by the Commission, except that they shall have no power to issue subpoenas or to administer oaths or affirmations: *Provided*, That they may call upon the Commission or any committee thereof, in the Commission's discretion, to assist them in securing any testimony, materials, documents, or other information necessary for their investigation and study.

(ii) The Commission shall require each task force to provide written quarterly reports to the Commission on the progress of the task force and, in the discretion of the Commission, an oral presentation of such report. In order to insure the correlation of data in the final report and recommendations of the Commission, the Director of the Commission shall coordinate the independent efforts of the task force groups.

(c) The Commission may fix the compensation of the members of such task forces at a rate not to exceed the daily equivalent of the highest rate of annual compensation that may be paid to employees of the United States Senate generally.

(d) The Commission shall, pursuant to section 6, insure that the task forces are provided with adequate staff support in addition to that authorized under section 6

(a), to carry out the projects assigned to them.

(e) Each task force appointed by the Commission shall, within one year from the date of the appointment of its members, submit to the Commission its final report of investigation and study together with recommendations thereon.

REPORT OF THE COMMISSION

SEC. 5. Upon the report of the task forces made pursuant to section 4 hereof, the Commission shall review and compile such reports, together with its independent findings, into a final report. Within six months after the reports of the investigating task forces, the Commission shall submit its final report, together with recommendations thereon, to the President of the Senate and the Speaker of the House of Representatives. The Commission shall cease to exist six months after submission of said final report but not later than June 30, 1977. All records and papers of the Commission shall thereupon be delivered to the Administrator of the General Services Administration for deposit in the Archives of the United States.

(b) Any recommendation of the Commission involving the enactment of legislation shall be referred by the President of the Senate or the Speaker of the House of Representatives to the appropriate standing committee of the Senate and House of Representatives, respectively, and such committees shall make a report thereon to the respective house within two years of such referral.

COMMISSION STAFF

SEC. 6. (a) The Commission may by record vote of a majority of the Commission members, appoint a Director of the Commission, a General Counsel, one professional staff member, and three clerical assistants. The Commission shall prescribe the duties and responsibilities of such staff members and fix their compensation at per annum gross rates not in excess of the per annum rates of compensation prescribed for employees of standing committees of the Senate.

(b) In carrying out any of its functions under this resolution, the Commission is authorized to utilize the services, information, facilities, and personnel of the Executive departments and agencies of the Government, and to procure the temporary or intermittent services of experts or consultants or organizations thereof by contract at rates of compensation not in excess of the daily equivalent of the highest per annum rate of compensation that may be paid to employees of the Senate generally.

SEC. 7. There is hereby authorized to be appropriated a sum not to exceed \$2,500,000 to carry out the provisions of this resolution. Until such time as funds are appropriated pursuant to this section, salaries and expenses of the Commission shall be paid from the contingent fund of the Senate upon vouchers approved by the Chairman. To the extent that any payments are made from the contingent fund of the Senate prior to the time appropriation is made, such payments shall be chargeable against the maximum amount authorized herein.

In lieu of the matter proposed to be inserted by the House engrossed amendment to the preamble of the resolution insert:

CONGRESSIONAL FINDINGS

The Congress, after careful review of the Federal Government's historical and special legal relationship with American Indian people, finds that—

- (a) the policy implementing this relationship has shifted and changed with changing administrations and passing years, without apparent rational design and without a consistent goal to achieve Indian self-sufficiency;
- (b) there has been no general comprehensive review of conduct of Indian affairs by the United States nor a coherent investigation of the many problems and issues in-

involved in the conduct of Indian affairs since the 1928 Meriam Report conducted by the Institute for Government Research; and

(c) in carrying out its responsibilities under its plenary power over Indian affairs, it is imperative that the Congress now cause such a comprehensive review of Indian affairs to be conducted.

DECLARATION OF PURPOSE

The Congress declares that it is timely and essential to conduct a comprehensive review of the historical and legal developments underlying the Indians' unique relationship with the Federal Government in order to determine the nature and scope of necessary revisions in the formulation of policies and programs for the benefit of Indians.

Mr. MEEDS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments to the House amendments be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Senate amendments to the House amendments were concurred in.

A motion to reconsider was laid on the table.

PRIVACY PROTECTION COMMISSION

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 3418) to establish a Privacy Protection Commission to provide management systems in Federal agencies and certain other organizations with respect to the gathering and disclosure of information concerning individuals, and for other purposes, with Senate amendments to the House amendments and concur in the Senate amendments with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

(1) Page 16, strike out lines 1 through 10, inclusive, and insert:

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(2) Page 24, strike out all after line 10 over to and including line 24 on page 25, and insert:

"(1) GENERAL EXEMPTIONS—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce cr-

or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(3) Page 42, strike out lines 11 through 21, and insert:

(h)(1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and, fined not more than \$5,000.

The Clerk read the House amendment to the Senate amendments to the House amendments as follows:

1. In section 3, strike out subsection (e) (6) and insert in its place:

"(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, makes reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;"

2. In section 3, strike out subsection (e) (7) and insert in its place:

"(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unpertinent to and within the scope of an authorized law enforcement activity;"

3. In section 3, strike out subsection (j) and insert in its place:

"(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (1) if the system of records is—

"(1) maintained by the Central Intelligence Agency; or

"(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which lists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consist-

ing only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section."

In section 5, strike out subsection (h) and insert in its place:

"(h)(1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000."

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that the full text of S. 3418, containing the Senate amendments to the House amendments, be considered as read and printed at this point in the Record, and that the text of the House technical amendment being offered also be printed at the end thereof.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

Mr. ERLBORN. Mr. Speaker, reserving the right to object, and I do not intend to object, I would like to ask the chairman of the subcommittee to explain the Senate amendments for our colleagues.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I will be most pleased to explain the Senate amendments and then will yield to the gentleman from Illinois for additional comments he or other Members may have on the privacy bill, or for questions concerning its provisions.

First, let me explain briefly the parliamentary situation. Both the House and the Senate passed privacy legislation on November 21. Our bill, H.R. 16373, was messaged over to the Senate the following day. The Senate measure, S. 3418, sponsored by the distinguished Senator from North Carolina, Mr. ERVIN, and a number of other distinguished Members of that body from both parties, was messaged to the House. The House bill was called up on November 22 in the Senate, and all after the enacting clause was stricken and the identical language of S. 3418, was substituted for the House language, and it was returned to the House. This meant, Mr. Speaker, that both the House and Senate versions of the privacy bills were pending at the Speaker's desk—but both bills—S. 3418 and H.R. 16373—had the identical language of the Senate-passed bill.

Because of the lateness in the session and the pressures on Members of both bodies due to other pressing legislative business, we determined that it would not be possible to resolve the complex differences between the two bills in a conference committee. Yet the sponsors and floor managers of the legislation on both sides firmly agreed that it was imperative that final action be taken on privacy legislation before the end of the Congress.

We thereupon agreed, Mr. Speaker, upon a parliamentary procedure which provided that the Senate bill, S. 3418, be taken from the Speaker's desk, be taken up by the House and repassed with the language of the House bill, H.R. 16373, as passed, substituted for all after the enacting clause and returned to the Senate for further action. This action was taken by me last Wednesday, December 11 (RECORD, pages 39200-39201), and the Senate bill was returned to that body with the language of H.R. 16373, as passed on November 21, and the short title was also amended to reflect the House version.

Mr. Speaker, the other body has now repassed S. 3418 with a series of amendments—many technical and some substantive—which retain the basic thrust of the House version, but which include important segments of the Senate measure. These amendments were informally negotiated by the staffs of the House and Senate committees and are based on agreements between the principal sponsors of the privacy bills in the two bodies.

In calling up the bill for final action and clearance for White House action today, I am asking that the House concur in these amendments—which in my opinion preserve the basic framework of the House bill, but which make a number of significant strengthening changes in the privacy measure that were included in the Senate version. As Members will recall, President Ford specifically endorsed the provisions of H.R. 16373 in October, with the provision that the amendment offered by the gentleman from Illinois (Mr. ERLBORN), relating to certain confidential investigative records be included in the bill. Such amendment was agreed to by the House on November 20, and is included in the version of the privacy bill now before us. Thus, Mr. Speaker, the bill now being considered here today has the full backing of the White House, and the Members of both parties in the House and the Senate who have had the responsibility of handling the measure in committee and on the floor.

Mr. Speaker, in its concurrence, the House of Representatives is clearing for final congressional action what will be known as the Privacy Act of 1974. This is truly an historic enactment. In effect, the Congress of the United States is acting in the finest sense to implement even further the Bill of Rights.

To my knowledge, this will be the first congressional action on a comprehensive Federal privacy law since the adoption of the fourth amendment to the Constitution. It is the solemn duty of the Congress, as well as the Supreme Court, to implement the spirit and letter of the Constitution.

Although this bill is limited to personal

information on individuals contained in Federal records, I am sure it is only the first step to strengthen the right to privacy.

The operative parts of this legislation will go into effect in 9 months. In its birth, I would like to think we are helping America prepare for a grand bicentennial, rededicating ourselves to the fundamental principles of individual freedom and dignity which made this Nation great.

Mr. Speaker, I will insert at this point in the RECORD the text of an analysis prepared by staff of the major amendments added to the House bill in the other body:

ANALYSIS OF HOUSE AND SENATE COMPROMISE AMENDMENTS TO THE FEDERAL PRIVACY ACT

The establishment of a Privacy Protection Study Commission. Only the Senate bill provided for an oversight and study commission to assist in the implementation of the act and to explore areas concerned with individual privacy which have not been included in the provisions of this legislation. The compromise measure will establish a Privacy Protection Study Commission of seven members instead of the five provided in the Senate bill. Three of these members will be appointed by the President, two by the President of the Senate, and two by the Speaker of the House of Representatives.

It is intended that this commission, which will serve for a period of two years, will be solely a study commission. In that capacity it is hoped the commission can assist the Executive Branch and the Congress in their examination of Federal government activities and their impact on privacy as well as representatives of State and local governments and the private sector who are attempting to deal with this important problem.

The scope of the commission's study authority is outlined specifically within the legislation. In section 5 (c) (2) (B), the commission is directed to examine certain issues which are not included in the compromise between the House and Senate bill, such as a requirement that a person maintaining mailing lists remove an individual's name upon request; the question of prohibiting the transfer of individually identifiable data from the Internal Revenue Service to other agencies and to State governments; a question of whether the Federal government should be liable for general damages occurring from a willful or intentional violation of the provisions of new section 552a(g) (1) (C) or (D) which this act creates; and the extent to which requirements for security and confidentiality of records maintained under this act should be applied to a person other than an agency.

The commission shall from time to time and in an annual report, report to the Congress and to the President on its activities, and it shall submit a final report of its findings two years from the date the members of the commission are appointed.

In addition, the commission is authorized to provide necessary technical assistance and prepare model legislation upon request for State and local governments interested in adopting privacy legislation. Strict standards and penalties are placed upon commission members and employees with regard to the handling and unlawful distribution of information about individuals which it receives in the course of carrying out its functions.

While the provisions of the rest of this act do not go into effect until 270 days from the date of enactment, the commission is authorized to go into effect immediately upon the appointment of its members in order that some of its work may be available to the Congress and the Executive Branch by

the time the remainder of the legislation becomes effective.

ROUTINE USE

The House bill contains a provision not provided for in the Senate measure exempting certain disclosures of information from the requirement to obtain prior consent from the subject when the disclosure would be for a "routine use". The compromise would define "routine use" to mean: "with respect to the disclosure of a record, the use of such records for a purpose which is compatible with the purpose for which it was collected."

Where the Senate bill would have placed tight restrictions upon the transfer of personal information between or outside Federal agencies, the House bill, under the routine use provision, would permit an agency to describe its routine uses in the Federal Register and then disseminate the information without the consent of the individual or without applying the standards of accuracy, relevancy, timeliness or completeness so long as no determination was being made about the subject.

The compromise definition should serve as a caution to agencies to think out in advance what uses it will make of information. This act is not intended to impose undue burdens on the transfer of information to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information. It is, however, intended to discourage the unnecessary exchange of information to other persons or to agencies who may not be as sensitive to the collecting agency's reasons for using and interpreting the material.

INFORMATION ON POLITICAL ACTIVITIES

The House bill tells agencies that they may not maintain a record concerning the political or religious beliefs or activities of any individual unless maintenance of the record would be authorized expressly by statute or by the individual about whom the record is maintained. The House bill goes on to provide that this subsection is not deemed to prohibit the maintenance of any record or activity which is pertinent to and within the scope of a duly authorized law enforcement activity.

The Senate bill constitutes a prohibition against agency programs established for the purpose of collecting or maintaining information about how individuals exercise First Amendment rights unless the agency head specifically determines that the program is required for the administration of a statute.

The compromise broadens the House provisions application to all First Amendment rights and directs the prohibition against the maintenance, use, collection, or dissemination of records. However, as in the House bill, it does permit the maintenance of those records which are expressly authorized by statute or by the individual subject, or are pertinent to or within the scope of an authorized law enforcement activity.

CONFIDENTIAL SOURCES OF INFORMATION

The compromise provision for the maintenance of information received from confidential sources represents an acceptance of the House language after receiving an assurance that in no instance would that language deprive an individual from knowing of the existence of any information maintained in a record about him which was received from a "confidential source." The agencies would not be able to claim that disclosure of even a small part of a particular item would reveal the identity of a confidential source. The confidential information would at the very least have to

be characterized in some general way. The fact of the item's existence and a general characterization of that item would have to be made known to the individual in every case.

Furthermore, the acceptance of this section in no way precludes an individual from knowing the substance and source of confidential information, should that information be used to deny him a promotion in a government job or access to classified information or some other right, benefit or privilege for which he was entitled, otherwise if he should consequently bring legal action against the government and should base any part of its legal case on that information.

Finally, it is important to note that the House provision would require that all future promises of confidentiality to sources of information be expressed and not implied promises. Under the authority to prepare guidelines for the administration of this act it is expected that the Office of Management and Budget will work closely with agencies to insure that Federal investigators make sparing use of the ability to make express promises of confidentiality.

STANDARDS APPLIED TO DISSEMINATION OUTSIDE THE GOVERNMENT

H.R. 16373 requires that all records which are used by an agency in making any determination about an individual be maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. S. 3418 goes much further and requires that agencies apply these standards at any time that access is granted to the file, material is added to or taken from the file, or at any time it is used to make a determination affecting the subject of the file.

The difference between these two measures represents a difference in philosophy regarding the handling of personal information. The Senate measure is designed to complement the requirement that agencies maintain only information which is relevant and necessary to accomplish a statutory purpose. The standard of relevancy should be that statutory basis for an information program which is now set forth in (e) (1) of the compromise measure. By adopting this section, the Senate hoped to encourage a periodic review of personal information contained in Federal records as those records were used or disseminated for any purpose.

The House provision would have applied these important standards for maintenance of information in records at any time a determination is made about an individual. The House bill goes on to permit additional "routine uses" of information which may not rise to the threshold of an "agency determination" without requiring that the information be upgraded to meet these standards.

The compromise amendment would adopt the section of the House bill applying the standards of accuracy, relevance, timeliness and completeness at the time of a determination. It would add the additional requirement, however, that prior to the dissemination of any record about an individual to any person other than another agency, the sending agency shall make a reasonable effort to assure that the record is accurate, complete, timely, and relevant. This proviso was included because Federal agencies would be governed by a requirement to clean up their records before a determination is made and limited by a requirement to publish each routine use of information in the Federal Register, but the use of information by persons outside the Federal government would not be governed by this act. Therefore, agencies are directed to be far more careful about the dissemination of personal information to persons not governed by the enforcement provisions of this bill.

Continued...