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## PRIVACY ACT OF 1974

OCTOBER 2, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MOORHEAD of Pennsylvania, from the Committee on Government Operations, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany H.R. 16373]

The Committee on Government Operations, to whom was referred the bill (H.R. 16372) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

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#### SUMMARY AND PURPOSE

H.R. 16373 prescribes legislative guidelines within the framework of the Freedom of Information Act (5 U.S.C. 552) to protect the privacy of individuals by regulating the Federal Government's collection, maintenance, use, or dissemination of personal, identifiable information.

In summary, the bill:

1. 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).

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

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

4. 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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. Makes unlawful possession of or disclosure of individually identifiable information by a government employee punishable by a fine not to exceed \$5,000.

11. 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.

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

Hearings and investigations by subcommittees of the House Government Operations Committee over the past decade have revealed major violations of the privacy of individual American citizens by the Federal Government in its growing collection and use of personal data furnished by citizens for specific governmental purposes. Accelerated data sharing of such personally identifiable information among increasing numbers of Federal agencies through sophisticated automated systems, coupled with the recent disclosures of serious abuses of governmental authority represented by the collection of personal dossiers, illegal wiretapping, surveillance of innocent citizens, misuse of income tax data, and similar types of abuses, have helped to create a growing distrust, or even fear of their Government in the minds of millions of Americans.

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 recognizes the legitimate need of the Federal Government to collect, store, use, and share among various agencies certain types of personal data. This information includes income tax returns, Social Security records, veterans' medical and service records, civil service records, census data, economic statistics, governmental payroll records, law enforcement records, and other similar types of personally identifiable information about many millions of individuals.

H.R. 16373 provides that each agency covered by it administer its provisions independently, subject to the guidelines created by law and agency regulations implementing each operative part. Regulations are subject to standard rulemaking requirements of the Administrative Procedure Act (title 5, section 553, United States Code).

Like the Freedom of Information Act, H.R. 16373 also recognizes that certain areas of Federal records are of such a highly sensitive nature that they must be exempted from its provisions. The measure provides a general exemption from most of the bill's operative provisions to systems of records maintained by the Central Intelligence Agency and those used for criminal justice purposes such as computerized systems of the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation, and other Federal criminal history file systems. Other committees of the Congress

have been studying this aspect of the privacy issue and currently have pending separate bills to provide safeguards in the criminal justice information area.

H.R. 16373 also permits the head of an agency to exempt certain other types of record systems, subject to his written determination of the reasons to be published in the *Federal Register*. These include systems of records that--(1) are subject to withholding under section 552(b)(1) of the Freedom of Information Act, relating to classified national defense or foreign policy information; (2) consist of certain types of investigatory material compiled for law enforcement purposes; (3) relate to protective services rendered the President of the United States and others, such as those records maintained by the Secret Service; and (4) are required by other statutes to be maintained and used solely as statistical reporting or research records.

Under the provisions of this legislation, however, Federal agencies (even those to which these exemptions apply) would be required to publish annually in the *Federal Register* certain identifying characteristics about virtually all systems of records under their control from which personally identifiable information could be retrieved. The objective of the bill is that there be no "secret" government system of records containing personal information about individuals.

Also like the Freedom of Information Act, H.R. 16373 provides for the exercise of civil remedies by individuals against the Federal Government through the Federal courts to enforce their rights, with the burden of proof resting on the government. Provision is made for the collection of actual damages by the individual against the government if the infraction was willful, arbitrary, or capricious, and the court may award the complainant court costs and attorney fees in its discretion. Penalties are also provided for the unauthorized knowing and willful disclosure of individually identifiable material by a government officer or employee by a fine of not more than \$5,000. Criminal penalties and fines would be imposed on persons requesting or obtaining any such individually identifiable record under false pretenses.

H. R. 16373 attempts to strike that delicate balance between two fundamental and conflicting needs--on the one hand, that of the individual American for a maximum degree of privacy over personal information he furnishes his government, and on the other, that of the government for information about the individual which it finds necessary to carry out its legitimate functions.

#### BACKGROUND

Public and Congressional concern over an increasing trend within our government to snoop into virtually every segment of our society is not new.

George Orwell's famous book *1984*, published a generation ago, focused public attention on the fictional fishbowl existence of human life in the "Big Brother" era and the potential threats to any free system posed by some political-technical-social innovations.

During the "cold war" period of the late 1940s and 1950s, widespread abuses engulfed various governmental and private efforts to ferret out alleged "subversives." Intellectual dissent was driven some-

what into hiding. Terms such as "security risk," "loyalty oaths," "pinko," and "guilt by association" came into common usage during what later became known as the "McCarthy era" of the early half of the 1950s. Many Americans were required to defend publicly their loyalty during "star-chamber" proceedings, often despite years of service to our Nation during war and peacetime. Indiscriminate use of dubious "informers," wiretapping, surveillance, neighborhood snooping, and other flagrant invasions of personal privacy were seen more and more.

In the 1960s the former Special Subcommittee on Government Information of this committee launched extensive investigations into the practice of telephone monitoring and the use of so-called "lie detectors" by Federal agencies. Hearings, studies and reports based on these investigations revealed numerous examples of privacy invasion affecting Federal employees and the public in their dealings with Federal agencies.<sup>1</sup>

Late in 1964, the chairman of the Government Operations Committee created a Special Subcommittee on Invasion of Privacy, which began inquiries into Federal agency investigative activities, the proposed establishment of a National Data Bank by the government, computerized personal recordkeeping, and related privacy matters. Hearings were held during 1965 and 1966 into such issues and a report, concentrating on the National Data Bank concept was issued by the Committee in 1968.<sup>2</sup> The Special Subcommittee also held hearings in 1968 on the privacy abuses inherent in the operation of private commercial credit reporting organizations.<sup>3</sup> The Foreign Operations and Government Information Subcommittee of this Committee in 1970 updated the earlier studies and reports on Federal agency telephone monitoring practices.<sup>4</sup>

Increasing concern over invasion of privacy during the 1960s resulted in Congressional efforts to deal with aspects of the problem on a piecemeal basis. The enactment of the Fair Credit Reporting Act of 1970 was directed at many of the privacy abuses uncovered by the Special Subcommittee on Invasion of Privacy two years earlier.<sup>5</sup> The investigation of military surveillance over American political dissidents by the Senate Subcommittee on Constitutional Rights headed by Senator Ervin revealed yet another dimension of abuses during the late 1960's involving intelligence gathering activities that violated

<sup>1</sup> H. Rept. 1215, 87th Cong., 1st sess., "Availability of Information from Federal Departments and Agencies (Telephone Monitoring)," Sept. 19, 1961; H. Rept. 1898, 87th Cong., 2d sess., "Availability of Information from Federal Departments and Agencies (Telephone Monitoring—Second Review)," June 22, 1962; "Use of Polygraphs by the Federal Government (Preliminary Study)," Committee Print, 88th Cong., 2d sess., Apr. 1964; Hearings, Foreign Operations and Government Information Subcommittee, 88th Cong., 2d sess., "Use of Polygraphs as 'Lie Detectors' by the Federal Government," Parts 1-4, Apr. and May, 1964; Parts 5-6, May and Aug., 1965; H. Rept. 198, 89th Cong., 1st sess., "Use of Polygraphs as 'Lie Detectors' by the Federal Government," part 1, Mar. 22, 1965; H. Rept. 2081, 89th Cong., 2d sess., "Use of Polygraphs as 'Lie Detectors' by the Federal Government," part 2, Sept. 26, 1966.

<sup>2</sup> Hearings, Special Subcommittee on Invasion of Privacy, "Special Inquiry on Invasion of Privacy," part 1, June and September 1965; part 2, May 1966; "The Computer and Invasion of Privacy," July 1966; H. Rept. 1842, 90th Cong., 2d sess., "Privacy and the National Data Bank Concept," Aug. 2, 1968.

<sup>3</sup> Hearings, Special Subcommittee on Invasion of Privacy, 90th Cong., 2d sess., "Commercial Credit Bureaus," March 1968; hearings, "Retail Credit Co. of Atlanta, Georgia," May 1968.

<sup>4</sup> "Availability of Information from Federal Departments and Agencies (Telephone Monitoring—Third Review)," Committee Print, 91st Cong., 2d sess., December 1970.

<sup>5</sup> Public Law 91-508; 15 U.S.C. 1681 et seq.

basic privacy rights.<sup>8</sup> Such actions were prompted by the rash of civil disturbances and racial and political unrest on college campuses.

A survey and hearings by the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee in 1965, 1966, and 1967 had already explored such areas as electronic eavesdropping, wiretapping, the Federal Government's collection of personal data, lie detectors, surveillance activities, and other privacy issues. In a November, 1967, publication entitled "Government Dossiers (Survey of Information Contained in Government Files)" that subcommittee reported the results of a survey of Federal agencies as to the types of information collected and maintained by government on individuals. The results of this survey were important in identifying data systems that could be subject to regulation and in the subsequent drafting of legislation to curb governmental privacy abuses.<sup>9</sup>

Also during this same period, legislation was first considered to protect the Constitutional rights to privacy of Federal employees. The Ervin bill has been passed by the Senate during each of the past several Congresses, but it has never been acted upon in the House.<sup>10</sup>

Much of the Congressional investigative and legislative activity in recent years to deal with the rising tide of privacy-related abuses in the public and private sectors has been spear-headed by the Senate Constitutional Rights Subcommittee. However, other types of legislation to assure individual safeguards against the misuse of personal data held by Federal agencies was being introduced in the House by Representative Koch and many other Members. Hearings were held in June 1972 on such legislation (H.R. 9527) by the Foreign Operations and Government Information Subcommittee of this committee, but no further action was taken before adjournment of the 92nd Congress. The bill was the forerunner of revised and separate versions introduced by many other Members of the House in 1973 and 1974, on which H.R. 16373 is based.<sup>11</sup>

A study by the National Academy of Sciences Project on Computer Databanks was also published in 1972. Entitled "Databanks in a Free Society," this study outlined what the use of computers is actually doing to record-keeping processes in the United States, and what the growth of large-scale databanks—both manual and automated—implies for the individuals' constitutional right to privacy and due process.<sup>12</sup>

<sup>8</sup> For a detailed summary of Army surveillance and intelligence activities over civilians, see article by Christopher H. Pyle, "CONUS Revisited: The Army Covers Up" in a collection of materials compiled and published as a Committee Print by the Congressional Research Service, Library of Congress relating to the 1971-1972 Intercollegiate debate topic, "Resolved: That More Stringent Control Should be Imposed Upon Government Agencies Gathering Information About United States Citizens," H. Doc. 92-167, pp. 207-218.

<sup>9</sup> *Ibid.*, "Survey of Information Contained in Government Files," pp. 32-39.

<sup>10</sup> *Ibid.* The Congressional Research Service compilation included a legislative history of Congressional action involving various Ervin bills; see pp. 101-115. "S. 782—A Bill to Protect the Constitutional Right to Privacy of Federal Employees," by Robert M. Foley and Harold P. Coxson; originally copyrighted and published in the *American University Law Review*, vol. 19, June-August 1970, pp. 522-549.

<sup>11</sup> Hearings, Foreign Operations and Government Information Subcommittee, "Records Maintained by Government Agencies," on H.R. 9527 and related bills: 92d Cong., 2d sess., June 1973; "Access to Records," on H.R. 12206 and related bills: 93d Cong., 2d sess., February, April, and May 1974.

<sup>12</sup> Alan F. Westin and Michael A. Baker, *Databank in a Free Society*, report of the Project on Computer Databanks, Computer Science and Engineering Board, National Academy of Sciences, New York: Quadrangle Books, 1972. For a summary of the report, see Hearings, Foreign Operations and Government Information Subcommittee, "Federal Information Systems and Plans—Implications and Issues," part 2, 93d Cong., 2d sess., January and February 1974. Pp. 1190-1196.

During this same period, Elliott Richardson, then Secretary of Health, Education and Welfare, named an Advisory Committee on Automated Personal Data Systems to make an intensive study of the impact of computer data banks on individual privacy. Its detailed report, "Records, Computers, and the Rights of Citizens," was published in 1973 and recommended the enactment of Federal legislation guaranteeing to all Americans a "code of fair information practices."<sup>11</sup> H.R. 16373 embodies the major principles of these recommendations as they apply to an individual's access to records in the Federal Government.

Late in 1972, meanwhile, the Foreign Operations and Government Information Subcommittee of this committee began an investigation of a comprehensive report the President's Domestic Council proposing a nationwide system of computer and communications technology to create "wired cities" and a "wired Nation." The report, entitled "Communications for Social Needs: Technological Opportunities," was prepared in 1971. Although the report was formally rejected, according to a White House spokesman, the "Big Brother" implications were another ominous indication of the possible threats to individual privacy in America. This investigation led to broad investigative hearings by the Subcommittee into advanced information technology and the use of information systems by the Federal Government. These hearings began in April 1973, and concluded early in 1974. They were a useful adjunct to the legislative hearings on H.R. 16373 and its legislative forerunners, which they closely paralleled.<sup>12</sup>

Another related investigation affecting individual privacy was also conducted by the Subcommittee during this same period. It involved the issuance of a Presidential Executive order in January 1973 to permit the Agriculture Department to inspect some 3 million income tax returns of persons having farming operations for the purpose of compiling special mailing lists to make statistical surveys. Hearings were held in May and August 1973. The order aroused widespread public concern and opposition and was strongly criticized in the subsequent unanimous report issued by the Committee in October 1973.<sup>13</sup> In the interim, the Internal Revenue Service had postponed implementation of the order and it was finally rescinded in the spring of 1974.<sup>14</sup>

The growing concern of Americans of all walks of life to the threat of a "Big Brother" society well in advance of 1984 has been reflected in the Congress. During the last two years, more than 100 Members of Congress of both parties and of all shades of political ideology have

<sup>11</sup> "Records, Computers, and the Rights of Citizens," a report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Department of Health, Education, and Welfare, July 1973, DHEW Publication No. (OS) 73-94. See "Summary and Recommendations," p. xxiii.

<sup>12</sup> Hearings, Foreign Operations and Government Information Subcommittee, 93d Cong., 1st and 2d sess., "Federal Information Systems and Plans--Federal Use and Development of Advanced Information Technology" (Part 1, April 1973); (part 2, June and July 1973); "Federal Information Systems and Plans--Implications and Issues" (part 3, January and February 1974).

<sup>13</sup> Hearings, Foreign Operations and Government Information Subcommittee, 93d Cong., 1st sess., "Executive Orders 11697 and 11709 Permitting Inspection by the Department of Agriculture of Farmers' Income Tax Returns," May and August 1973; H. Rept. 93-598, 93d Cong., 1st sess., "Information from Farmers' Income Tax Returns and Invasion of Privacy," Oct. 18, 1973.

<sup>14</sup> F.R. ——— 1974: additional attention on invasion of privacy aspects of the Executive orders was focused by the Domestic Council Committee on the Right of Privacy, headed by then Vice President Ford.

introduced or co-sponsored legislation to impose effective safeguards on both government and business in their collection and use of personal data.

In June 1974, the Foreign Operations and Government Information Subcommittee of this committee held extensive hearings on the Federal Government's telephone monitoring practices and the use of "lie detectors" and other similar newer devices, thus updating the earlier Subcommittee studies in these areas during the 1960s.<sup>12</sup> These hearings also paralleled consideration of H.R. 16373 during its markup stages.

Former President Nixon's State of the Union Message to Congress on January 30, 1974, also took note of the need to protect individual privacy. He said:<sup>13</sup>

One of the basic rights we cherish most in America is the right of privacy. With the advance of technology, that right has been increasingly threatened. The problem is not simply one of setting effective curbs on invasions of privacy, but even more fundamentally one of limiting the uses to which essentially private information is put, and of recognizing the basic proprietary rights each individual has in information concerning himself.

Privacy, of course, is not absolute; it may conflict, for example, with the need to pursue justice. But where conflicts occur, an intelligent balance must be struck.

One part of the current problem is that as technology has increased the ability of government and private organizations to gather and disseminate information about individuals, the safeguards needed to protect the privacy of individuals and communications have not kept pace. Another part of the problem is that clear definitions and standards concerning the right of privacy have not been developed and agreed upon.

To carry forward these efforts he established on February 23, 1974, a cabinet-level "Committee on the Right of Privacy" within the White House's Domestic Council headed by then Vice President Gerald R. Ford. At its July 10, 1974, meeting, that committee urged the enactment of privacy legislation embodying the principles contained in H.R. 16373, along with a number of other important "privacy initiative" measures.<sup>14</sup>

Additional impetus in Congress to enact privacy safeguards into law has resulted from recent revelations connected with Watergate-related investigations, indictments, trials, and convictions. They include: such activities as the break-in at the Democratic National Committee's headquarters in June 1972, the slowly emerging series of revelations of "White House enemies' lists," the break-in of the office of Daniel Ellsberg's psychiatrist, the misuse of CIA-produced "personality profiles" on Ellsberg, the wiretapping of the phones of government employees and news reporters, and surreptitious taping of

<sup>12</sup> Hearings, Foreign Operations and Government Information Subcommittee, 93d Cong., 2d sess., "The Use of Polygraphs and Similar Devices by Federal Agencies," June 1974; "Telephone Monitoring Practices by Federal Agencies," June 1974.

<sup>13</sup> *Congressional Record*, Jan. 30, 1974 (daily edition), p. H372.

<sup>14</sup> Domestic Council Committee on the Right of Privacy, "Fact Sheet on Meeting of Committee, issued July 10, 1974, see "Proposed Initiative No. 9," p. 4.

personal conversations within the Oval Office of the White House as well as political surveillance, spying, and "mail covers."

Other important support for prompt action to preserve the individual's right to privacy from further erosion has come from individual computer companies and trade associations representing every segment of the American computer industry. These experts presented testimony stressing the importance of privacy and the safeguarding of the integrity of stored data on individuals during the Foreign Operations and Government Information Subcommittee's hearings on information technology early in 1974.<sup>19</sup> A recent nationwide IBM institutional advertisement, entitled "Four Principles of Privacy," endorsed these basic purposes as "sound public policy" cornerstones:<sup>20</sup>

1. Individuals should have access to information about themselves in record-keeping systems. And there should be some procedure for individuals to find out how this information is being used.
2. There should be some way for an individual to correct or amend an inaccurate record.
3. An individual should be able to prevent information from being improperly disclosed or used for other than authorized purposes without his or her consent, unless required by law.
4. The custodian of data files containing sensitive information should take reasonable precautions to be sure that the data are reliable and not misused.

As they apply to record-keeping activities of the Federal Government, these are also among the basic principles of privacy protection that are contained in H.R. 16373.

The broad principles involved in what is conveniently called "the individual right of privacy" are deeply rooted in our history and derived from the Bill of Rights of the United States Constitution. The fourth amendment to the Constitution was written as the result of the American colonial experience with warrants and writs issued under King George III of England which often gave his officers an excuse to search anyone, anywhere, any time. Even then an English Chief Justice—Pratt, later Lord Camden—in commenting upon such a search conducted against John Wilkes, said:<sup>21</sup>

To enter a man's house by virtue of a nameless warrant, in order to procure evidences, is worse than the Spanish Inquisition—a law under which no Englishman would wish to live an hour.

In their famous 1890 *Harvard Law Review* article "The Right to Privacy," Samuel Warren and Louis D. Brandeis concluded:<sup>22</sup>

It would doubtless be desirable that the privacy of the individual should receive the added protection of the criminal law, but for this, legislation would be required . . . The

<sup>19</sup> See Hearings, "Federal Information Systems and Plans," op. cit., part 3, testimony from technical experts in information system industry.

<sup>20</sup> "IBM Reports—Four Principles of Privacy," full page advertisement, *Newsweek*, July 8, 1974, p. 48.

<sup>21</sup> Hearings, Special Subcommittee on Invasion of Privacy, "Special Inquiry on Invasion of Privacy," op. cit., p. 4.

<sup>22</sup> 4 *Harvard Law Review* 193 (1890).

common law has always recognized a man's house as his castle, impregnable, often, even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?

Almost 40 years later, Justice Brandeis, in his famous dissent in the case of *Olmstead v. United States*, set forth the basic Constitutional principles of individual privacy:<sup>22</sup>

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect \* \* \*. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, 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 went on to say further in his dissent, even more relevant in these days of wholesale abuses of governmental power in our modern computerized society:

Experience should teach us to be most on our 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.

While there can be no right of *absolute* privacy in our complex civilization, there is an urgent need today to assert the fundamental right of privacy for all Americans to the maximum extent consistent with the overall welfare of our Nation. The Federal Government can and must take the lead to achieve this important objective. Congress has the opportunity to mandate such action by acting promptly to enact H.R. 16373 into law.

On August 12, 1974, in his first address to the Congress as Chief Executive, President Ford pledged his personal and official dedication to the individual right of privacy. He declared, "There will be hot pursuit of tough laws to prevent illegal invasion of privacy in both government and private activities." The Committee offers H.R. 16373 as the first step in that pursuit.

#### COMMITTEE ACTION AND VOTE

As noted above, the issues involved in the safeguarding of individual privacy have been the subject of numerous investigatory hearings by the Foreign Operations and Government Information Subcommittee of this committee during the past several years.

<sup>22</sup> *Olmstead v. United States*, 277 U.S. 438 (1928); quoted in Hearings, Special Subcommittee on Invasion of Privacy, "Special Inquiry on Invasion of Privacy," op. cit., pp. 3-4.

Public hearings on specific legislative proposals related to H.R. 16373 were held by the Subcommittee in June 1972, and in February, April, and May 1974, on a number of revised privacy measures—H.R. 12206, H.R. 12207, H.R. 13303, H.R. 13304, H.R. 13872, H.R. 14493, etc.

Subcommittee markup sessions were held in May, June, and July to draft effective and workable language to reach a balance between the individual's rights to privacy and the government's need for personal information. During this period, much of the technical detail of H.R. 16373 was worked out in informal meetings among the Subcommittee's staff, the assistant minority counsel for the Committee, officials of the Office of Management and Budget, and representatives of the Vice President's Committee on the Right of Privacy.

After agreement in principle was reached by the Subcommittee on most of the specific language, a clean bill—H.R. 16373—was introduced by Subcommittee Chairman Moorhead on August 12, 1974, co-sponsored by 13 Members, including several leading sponsors of privacy protection legislation in the House. The bill was subsequently reported favorably by the Subcommittee on September 12, 1974, without a dissenting vote.

The Government Operations Committee considered H.R. 16373 on September 19, 1974, and favorably reported it to the House on September 24, 1974, by a roll call vote of 39 to 0.

#### DISCUSSION

Because of the complex interrelationships of the major provisions of this legislation, each of its subsections is explained in detail in this part of the report.

#### DEFINITIONS

Section 3 of H.R. 16373 sets forth the new privacy protection section 552a of title 5, United States Code, and in section (a) provides six definitions of terms used in the new section:

Section (a) (1) defines the term "agency."

Section (a) (2) defines the term "individual" as affected by this measure as a "citizen of the United States or an alien lawfully admitted for permanent residence" in the United States; thus, it would not affect any other foreign nationals.

Section (a) (3) defines the term "maintain" with respect to agency records to include the other terms "collect, use, or disseminate."

Section (a) (4) defines the term "record" as "any collection or grouping of information about an individual that is maintained by an agency and that contains his name or identifying number, symbol, or other identifying particular assigned to such individual." This encompasses records contained in either manual files or automated or computerized forms.

Section (a) (5) defines the term "system of records" as "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 other identifying number, symbol, or other identifying particular assigned to each such individual."

Section (a) (6) defines the term "statistical reporting or research record" as "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, United States Code." This latter provision permits the Census Bureau to furnish transcripts of census records for genealogical and other proper purposes and to make special statistical surveys from census data for a fee upon request.

#### CONDITIONS OF DISCLOSURE

Section 552a (b) provides that no Federal agency shall disclose any record containing personal information about an individual without his approval to any person not employed by that agency or to another agency except under certain special conditions.

The consent requirement may well be one of the most important, if not the most important, provisions of the bill. No such transfer could be made unless it was pursuant to a written request by the individual or by his prior written consent. This requirement would apply to all so-called "non-routine" transfers of information. It is not the Committee's intent to impede the orderly conduct of government or delay services performed in the interests of the individual. Under the conditional disclosure provisions of the bill, "routine" transfers will be permitted without the necessity of prior written consent. A "non-routine" transfer is generally one in which the personal information on an individual is used for a purpose other than originally intended.

Agencies will be required to publish annually in the Federal Register a description of each "routine" purpose for which personal information records are used or intended to be used. The Committee intends to exercise a vigorous oversight check on agencies to make certain as much as possible that no "non-routine" transfers of records of the type requiring prior written consent are either hidden or blanketed in under the "routine" category to nullify the basic protections of the law to individuals.

Another exception to the consent requirement is where a personal information record is transferred to another agency, including state and local instrumentalities, for a law enforcement activity if such activity is authorized by law and if the head of the agency seeking the information has made a written request specifying the particular portion desired and the criminal or civil law enforcement activity for which the record is sought.

A record cannot be transferred to another agency for statistical reporting or research purposes unless it is in a form that is not individually identifiable. This, for example, would prohibit such things as the transfer of personal financial information on income tax returns of farmers to the Department of Agriculture without the prior written consent of farmers.

An exception to this requirement would be made for the transfer of records to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity. Laws relating to the Bureau of the Census are very strict, limiting access to such records only to Census employees and prohibiting their removal from the

premises and control of the Bureau. Even the Federal Bureau of Investigation is not permitted to examine individual Census records. The Committee believes the privacy rights of individuals already are adequately protected in the case of Census records and the Bureau of the Census is not involved in making individual program determinations comparable to other agencies.

The Committee is of the view that special consideration must be given to valid emergency situations, such as an airline crash or epidemic, where consent cannot be obtained because of time and distance and instant action is required, perhaps as a matter of life or death. The bill provides that in these situations record transfers can be made without the usual prior written consent if, on such disclosure, notification is transmitted to the individual's last known address. This provision is necessary so that government doctors and other Federal employees are not in the position of being technically in violation of the law.

The legislation also waives the consent provision when personal information is transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the government. In any case, the archival record protections contained in (1) (1) would apply to such records.

The final exception in the disclosure section relates to personal information needed by the Congress and its committees and subcommittees. Occasionally, it is necessary to inquire into such subjects for legislative and investigative reasons.

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 information 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 does not desire that agencies cease making individually-identifiable records open to the public, including the press, for inspection and copying. On the contrary, it believes that the public interest requires the disclosure of some personal information. Examples of such information are certain data about government licensees, and the names, titles, salaries, and duty stations of most Federal employees. The Committee merely intends that agencies consider the disclosure of this type of information on a category-by-category basis and allow by published rule only those disclosures which would not violate the spirit of the Freedom of Information Act by constituting "clearly unwarranted invasions of personal privacy."

Last, the Committee is cognizant of the fact that the Federal Reports Act (chapter 35 of title 44, United States Code) also restricts conditions of disclosure of personal information by government agencies. The purpose, scope, and administration of that act are different from similar aspects of H.R. 16373. Some records would be subject to the provisions of both the Federal Reports Act and this legislation,

however. The Committee intends that restrictions on the transfer of individually-identifiable data be as strong as they can be without impairing the ability of government agencies to perform their duties. It believes that the restrictions contained in this bill are stronger than the ones contained in section 3508 (b) of title 44, U.S.C., and that they should consequently be followed with respect to the disclosure of personal information. Insofar as the restrictions of 44 U.S.C. section 3508 (b) may be stronger, however, the Committee intends that they should be followed.

#### ACCOUNTING OF CERTAIN DISCLOSURES

H.R. 16373 also provides in section 552a (c) that each agency shall keep an accurate accounting of the date, nature and purpose of each disclosure of a record to any person or to another agency, including the name and address of the person or agency to whom such disclosure is made. Exceptions to this would be when the record is used by employees of the same agency who need it in the performance of their duties and when disclosures are made to the public from records which by law or regulation are open to public inspection or copying.

The Committee has used the term "accounting," rather than "record," to indicate that an agency need not make a notation on a single document of every disclosure of a particular record. The agency may use any system it desires for keeping notations of disclosures, provided that it can construct from its system a document listing of all disclosures.

The agency must retain the accounting for at least five years and make it available to the individual concerned at his request, except for the part dealing with transfers for civil and criminal law enforcement purposes.

Under the provisions of section 552a (d), which are described below, an agency may correct an individual's record or note that a portion of the record is in dispute. Section (c) requires the agency to inform any person or other agency to whom it disclosed a record within two years preceding the making of the correction or notation of dispute about this amendment to the record.

Corrections or notations of dispute made to records disclosed prior to the effective date of the legislation or for which no accounting of a disclosure is required would be exempt from this requirement.

#### ACCESS TO RECORDS

Section 552a (f) grants each individual access to records pertaining to him which are maintained by government agencies and permits him to request amendment of his records. Each agency must under this provision make any correction of the documents which the individual requests or inform that person why it refuses to make the change and allow him to appeal the refusal within the agency.

Whenever an agency determines on appeal not to alter a record, it must permit the individual to file a concise statement of his reasons for disagreement. Additionally, it must make copies of that statement available to persons or agencies to whom it later transfers the disputed portion of the record.

The Committee believes that this provision is essential to achieve an important objective of the legislation: Ensuring that individuals know what Federal records are maintained about them and have the opportunity to correct those records. The provision should also encourage fulfillment of another important objective: maintaining government records about individuals with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to individuals in making determinations about them. The constant vigilance of individual citizens backed by legal redress is the best means, in the Committee's opinion, of making certain that government treats people fairly.

#### AGENCY REQUIREMENTS

Section 552a (e) is intended to ensure that all individuals may know the administrative structure of all systems of records; the uses to which such records will be put; and the procedures by which access, if mandated, may be had and inaccurate records contested. The section also requires that any record used to make a determination about an individual be maintained in an accurate, timely, and relevant fashion. By the term "determination" the Committee means any decision affecting the individual which is in whole or in part based on information contained in the record and which is made by any person or any agency.

Section (e) (1) requirements relate only to those records which are compiled from information received directly from the concerned individual. The purpose of these requirements is to ensure that individuals supplying information for a record system are fully aware of what the record will be used for and whether or not a response to the request is mandatory or voluntary.

Under section (e) (1) (D) the individual must be informed of the consequences of not providing any or all of the requested information. If the requested information is required to be provided by statute, the notification to the individual should indicate the statutory provision and its reach. If failure to provide the information could subject the individual to loss of a government benefit, the extent of such loss should be indicated. If there is no adverse effect on the individual for failure to comply with any or all of the request, that information should also be noted.

Section (e) (2) encompasses the public notice required to be made by each agency. The intent of this section is to ensure that the essential characteristics of all information systems covered by this Act are known to the public. The existence and character of each system, whether or not exempt from other requirements of this Act, must be published in the Federal Register as required by this section.

Under section (e) (2) (A) the name and location of each system must be published. If a system is located in more than one place, each location must be listed. Under section (e) (2) (B) the categories of individuals whose records are maintained in the system must be listed. The purpose of this requirement is to enable an individual to determine if information on him might be in such system. The description of the categories should therefore be clearly stated in non-technical terms understandable to individuals unfamiliar with data collection techniques.

Under section (e)(2)(C) the categories of records maintained should be listed in a manner similar to that of (e)(2)(B) so as adequately to inform individuals unfamiliar with data collection as to the kinds of records held in the system. The listing of "routine purposes" under (e)(2)(D) should include all uses to which the records will be put in the normal course of business. Transfer of a record for any use which is not published under this subsection will require a request by or prior written consent of the individual to whom the record pertains as provided under 552a(b).

Section (e)(2)(E) and (F) requires the agencies adequately to inform the public as to the policies governing the physical custody and protection of the record systems and to advise the public of the agency official who is responsible for the maintenance of the system.

The provisions of section (e)(2)(G) and (H) may be satisfied by publication of the applicable rules made under 552a(f).

In reference to the requirement in (e)(3) relating to "timeliness," the Committee intends this word to mean that a record was timely at the point when the determination by the agency about the individual was actually made.

Section (e)(4) prohibits the maintenance of any record under this Act which concerns the political or religious beliefs or activities of any individual as defined by this Act unless the individual authorizes the maintenance of such record or unless the maintenance of such record is expressly authorized by statute.

#### AGENCY RULES

Under section 552a(f) each agency must establish rules by which individuals may be apprised of information about them in record systems and by which such individuals may challenge inaccuracies in those records.

The rules required under (f)(1) through (5) must be promulgated in accordance with the provisions of 5 U.S.C. section 553.

Under section (f)(1) the agency is required to establish procedures whereby upon the request of an individual, the agency must notify him if the system which he names does or does not contain a record pertaining to him.

Under section (f)(2) each agency must promulgate rules by which an individual seeking access to his records can sufficiently identify himself as the individual named in the record. Such identification should if possible be made in person by the individual seeking access to his record. However, agencies should make efforts to ensure that individuals who are unable to appear at a designated location can satisfy identification requirements by other means.

Under (f)(3) each agency must establish procedures for disclosing pertinent records or information to individuals upon request. If a record contains information about more than one individual or contains other data not pertaining to the individual requesting the record, only the information pertaining to the requesting individual must be disclosed.

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.

Under section (f)(4) each agency must establish rules by which an individual seeking to amend his record may have the request reviewed and if denied an initial review may appeal such denial.

This section additionally authorizes agency heads to promulgate such other rules as will enable individuals to enforce fully their rights under this Act.

Section (f)(5) authorizes the establishment of copying fees at the discretion of the agency. However, an agency may not charge the individual for time spent in searching for requested records or for time spent in reviewing records to determine if they fall within the disclosure requirements of the Act.

Finally, section (f) requires the publication of an annual compilation of all regulations promulgated by all agencies pursuant to this section.

The Office of the Federal Register is responsible for publication of this compilation and is directed to publish it in a form readily available to the public at low cost.

#### CIVIL REMEDIES

The section authorizing civil actions by individuals is designed to assure that any individual who has been refused lawful access to his record or information about him in a record, or has otherwise been injured by an agency action which was based upon a improperly constituted record, will have a remedy in the Federal District courts.

Actions may be brought if the agency refuses lawful access upon request of an individual. An action also lies if the agency makes an adverse determination based upon a record which is inaccurate, untimely, or incomplete. However, in order to sustain such action, the individual must demonstrate the causal relationship between the adverse determination and the incompleteness, inaccuracy, irrelevance or ~~request of an individual. An action also lies if the agency makes an~~ untimeliness of the record. Additionally, an action will lie for the failure of the agency to comply with any other section of this law when such non-compliance has an adverse effect upon the aggrieved individual.

The court may enjoin an agency from withholding records which do not fall within the exemptions set forth in sections 552a(j) or (k). The court is required to determine such matters *de novo* and the burden of proof is upon the agency to sustain the exemption.

Reasonable attorney fees and costs may be assessed against the government in any case where the plaintiff substantially prevails. It is intended that such award of fees not be automatic, but rather, that the courts consider the criteria as delineated in the existing body of law governing the award of fees. However, when an action is brought under section (g)(1)(B) or (C) and when the agency has been adjudged to have acted in a manner which was willful, arbitrary, or

capricious, the government shall be liable for reasonable attorney fees and costs.

In addition to the award of fees and costs, the United States is liable for actual damages resulting from the willful, arbitrary, or capricious action of an agency in a suit brought under section (g) (1) (B) or (C).

Venue lies in the district where the complainant resides or has his place of business, where the agency records are situated, or in the District of Columbia. The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the agency has materially or willfully misrepresented any information required to be disclosed and when such misrepresentation is material to the liability of the agency. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation.

#### RIGHTS OF LEGAL GUARDIANS

Section (h) provides that 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 such individual with respect to his rights under this law.

#### CRIMINAL PENALTIES

Any officer or employee of the United States who has access to or possession of a record the disclosure of which is prohibited by the Act or by the rules made pursuant to this act and who knowingly discloses such information to a person or agency not entitled to receive such information is liable for a fine of not more than \$5,000.

Any person who knowingly and willfully obtains a record concerning an individual from any agency under false pretenses is liable for a fine of not more than \$5,000.

#### GENERAL EXEMPTIONS

Section 552a(j) would permit the head of any agency to exempt certain systems of records within his agency from virtually all the requirements of the legislation. Only records maintained by the Central Intelligence Agency and criminal justice records could be so exempted. Even they would be subject to the requirements relating to conditions of disclosure (section 552a(b)) and publication of notice of the existence and character of each system of records (section 552a(c) (2) (A) through (F)).

The Committee believes that such a broad examination is permissible for these two types of records because they contain particularly sensitive information. C.I.A. files may include the most delicate information regarding national security. Criminal justice records are so different in use from other kinds of records that their disclosure should be governed by separate legislation.

The Committee has made certain, however, that a notice of the existence and character of these systems of records must be published at least annually in the *Federal Register*. We believe that the government should maintain no secret system of records about its own citizens. We have also made sure that systems may be exempted from certain re-

quirements of the bill only after the head of an agency promulgates rules which are open to public comment before they become effective. By this means, people will be afforded an opportunity to make their views on proposed exemptions known to the appropriate agencies, and agencies will be able to modify their decisions taking those views into account.

The Committee also wishes to stress that this section is not intended to require the C.I.A. and criminal justice agencies to withhold all their personal records from the individuals to whom they pertain. We urge those agencies to keep open whatever files are presently open and to make available in the future whatever files can be made available without clearly infringing on the ability of the agencies to fulfill their missions.

#### SPECIFIC EXEMPTIONS

Section 552a(k) would permit the head of any agency to exempt certain systems of records within his agency from some of the requirements of the legislation. The requirements from which these systems could be exempted are primarily those dealing with access by individuals to records about themselves. Only four categories of systems of records could be so excluded:

1. Information classified in the interest of national defense or foreign policy;

2. Investigatory material compiled for law enforcement purposes, except for information that is contained in criminal justice records (which are subject to section 552a(j)) and information that is open to public inspection under section 552 of this title, (the Freedom of Information Act);

3. Secret Service files maintained in connection with providing protective services to the President or other individuals; and

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

Sound reasons of public policy justify exempting each of these groups of records from individual access.

1. In some cases, disclosure of classified information, even to the person to whom it pertains, could damage the national defense or foreign policy, for the information would no longer be subject to all the security controls it is properly subject to as classified matter.

2. Individual access to certain law enforcement files could impair investigations, particularly those which involve complex and continuing patterns of behavior. It could alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution.

3. Access to Secret Service intelligence files on certain individuals would vitiate a critical part of Secret Service work which was specifically recommended by the Warren Commission that investigated the assassination of President Kennedy and funded by Congress.

4. Disclosure of statistical records in most instances would not provide any benefit to anyone, for these records do not have a direct effect on any given individual; it would, however, interfere with a legitimate, Congressionally-sanctioned activity.

As with systems of records which are exempted from virtually all requirements of the legislation by section 552a(j), the systems of records described in section (k) may be exempted from requirements only after the head of an agency promulgates rules which are open to public comment before they become effective. Also as with section (j) records, the Committee urges agencies maintaining section (k) records to open those documents to the individuals named in them insofar as such action would not impair the proper functioning of the agencies.

#### ARCHIVAL RECORDS

Section 552a(1) prescribes special provisions for records which are under the custody or control of the National Archives and Records Service, a constituent agency of the General Services Administration.

Paragraph (1) of this section deals with agency records accepted by the Administrator of General Services for storage, processing, and servicing which are now being provided by Federal Records Centers. These records are under the *control* of the agencies which deposited them; the National Archives and Records Service merely has *custody* of them while it is providing storage in Records Centers. Consequently, the paragraph states that these records shall, for the purposes of this section, be considered to be maintained by the agency which deposited them and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose any of these records except to the agency which maintains them or pursuant to rules established by that agency.

Paragraphs (2) and (3) deal with agency records pertaining to identifiable individuals which are transferred to the National Archives itself as records which have sufficient historical or other value to warrant their continued preservation by the United States Government. These records are under the actual *control* of the Archives; consequently, they shall, for the purposes of this section, be considered to be maintained by that agency.

Under paragraph (2), records which were transferred to the Archives *prior* to the effective date of this section shall not be subject to the provisions of the legislation. The Committee has written this exclusionary statement into the bill because it feels that requiring the Archives to reorganize large quantities of documents which are being used only for historical purposes would be expensive and would aid no one.

Under paragraph (3), records which are transferred to the Archives *after* the effective date shall be subject to most of the provisions of the bill. Since the records would already have been organized in conformity with the requirements of this section by the agency transferring them to the Archives, maintaining them in continued conformity with this law would not require any special effort. Permitting access to the records by individuals named in them would also be reasonable if access had been permitted by the agency which transferred the records to the Archives. (Insofar as a record could have been exempted from access under section 552a(j) or (k) before its transfer to the Archives, it could of course be similarly exempted after transfer by the Archivist of the United States.)

Records under the control of the Archives would not, however, be subject to the provisions of this law which permit changes in documents at the request of the individual named in them. A basic archival rule holds that archivists may not remove or amend information in any records placed in their custody. The principle of maintaining the integrity of records is considered one of the most important rules of professional conduct. It is important because historians quite properly want to learn the true condition of past government records when doing research: they frequently find the fact that a record was *inaccurate* is at least as important as the fact that a record was accurate.

The Committee believes that this rule is eminently reasonable and should not be breached even in the case of individually identifiable records. Once those documents are given to the Archives, they are no longer used to make any determination about any individual, so amendment of them would not aid anyone. Furthermore, the Archives has no way of knowing the true state of contested information, since it does not administer the program for which the data was collected; it cannot make judgments as to whether records should be altered.

#### ANNUAL REPORT

Section (m) provides that the President shall submit to the Speaker of the House of Representatives 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 that were exempted from the operative provisions of this law under the terms of section (j) or (k). Also to be included in the annual report would be the reasons for such exemptions and other information indicating efforts to comply with the law. It is hoped that all such information would be made public. If, however, the nature of any such exemption requires a security classification marking, it should be placed in a separate part of the report so as not to affect the remainder of the annual report.

#### TECHNICAL CHANGES

Section 4 of the bill makes necessary revisions of the chapter listing of chapter 5, title 5, United States Code to add this new section 552a — "Records about individuals".

#### EFFECTIVE DATE

Section 5 of the bill provides that it become effective on the 180th day following the date of enactment.

#### COST ESTIMATE

In compliance with clause 7 of rule XIII of the House of Representatives, the following statement is made relative to the cost which might be incurred in implementing this bill.

The Office of Management and Budget (OMB) estimates the annual cost of implementing this bill as between \$200 million to \$300 million.

a year, with a one-time "start-up" cost of \$100 million. Thus, the five-year estimate would range from \$1.1 billion to \$1.6 billion.

However, OMB made it clear that its estimates cannot have a higher degree of precision because of many imponderables, including possible savings off-sets. These problems were described in a letter from Mr. Robert H. Marik, Associate Director of OMB for Management and Operations, a copy of which may be found in the appendix of this report.

In the circumstances, the Committee concurs in the estimate of the Office of Management and Budget. The Committee also notes the Administration has circulated a proposed Executive order in the various agencies of the Government to carry out the objectives of this legislation. That Executive order was designed to be issued in the event Congress does not act. It is patterned very much after the House bill, H.R. 16373, now before you. The Office of Management and Budget has stated the cost of implementing this proposed Executive order would be approximately the same as the House bill. So the cost factor appears to be virtually academic. Our Government, subject to the President's final approval, intends to spend this money for this purpose whether we act or not. However, this is a congressional responsibility.

#### AGENCY VIEWS

See letter from OMB and Civil Service Commission, dated September 18, 1974, to Chairman Holifield.

#### EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET.

Washington, D.C., October 2, 1974.

Hon. WILLIAM S. MOORHEAD,

*Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is intended to summarize our views with respect to H.R. 16373 which was recently ordered to be reported by the Committee on Government Operations.

Since time does not permit us to seek the view of all agencies concerned we are unable to speak for them. However, we have noted that this bill is in most respects consistent with earlier legislative proposals which were reviewed with those agencies.

We remain concerned, however, that the bill does not exempt from certain of its operative provisions, personnel testing and examination material and other personnel security and evaluation files, especially those containing information gathered under a pledge of confidentiality. Permitting unrestricted individual access to such records would seriously hamper agencies in evaluating the qualifications and reliability of Federal civilian, military, and contractor personnel.

With the exception of these provisions, we find the bill to be generally consistent with our views on this subject.

Sincerely,

ROBERT H. MARIK,

*Associate Director for Management and Operations.*

U.S. CIVIL SERVICE COMMISSION.  
Washington, D.C., September 18, 1974.

HON. CHIEF HOLIFIELD,

*Chairman, Committee on Government Operations, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Civil Service Commission strongly urges that the Committee restore to H.R. 16373 exemptions which will enable the Commission to continue efficiently to carry out its responsibilities with respect to Federal employee management. The exemptions were in paragraphs (4) and (5) of the proposed section 552a(j) to title 5, United States Code, as added by section 3 of H.R. 16373. As introduced, these provisions would have exempted from the disclosure and access-to-records provisions of the legislation:

(4) Investigatory material maintained for the purpose of determining initial or continued eligibility or qualification for Federal employment, military service, Federal contracts, or access to classified information; or

(5) Material used for appointment, employment, or promotion in the Federal service.

The latter item while very broad was intended principally to protect materials used in civil service examinations.

With respect to investigatory material, the Commission is authorized and directed, pursuant to 5 U.S.C. 3301 and 3302, to examine into the character and fitness of civil service applicants in order to determine their relative suitability for employment. These suitability determinations are essential to the maintenance of a high-caliber work force because they insure that from the standpoint of character and integrity, as well as of qualifications, we select the very best applicants for Government employment.

Our long experience in investigations indicates that those who give witness to the qualifications and integrity of others are ordinarily far more candid when the information is given under pledge of confidence than they are when they presumably are speaking for publication. And this experience is borne out whether the person who reports to us is a former employer, an associate, or a neighbor. Without an exemption similar to that stated in subsection (4) quoted above, we could not maintain the confidentiality of the information we receive or of its sources, with the result that we could not effectively perform the full reach of our statutory functions. In a word, we could not give adequate assurance that persons employed were in fact qualified from the standpoint of either competence or integrity.

With respect to examining material, the Commission must maintain the integrity of the competitive process which plays such an important part in the staffing of the competitive service. Obviously, in determining the relative ability of competitors for Federal positions, the Commission must use an examining process which is scrupulously fair to all who are concerned. If test questions and rating information is made available to the persons to whom they pertain, the Commission will be unable to control the dissemination of such information to others. Applicants, by learning the correct answers to the questions, could use the information to compromise the fairness of the entire testing system, and reduce to a shambles the open competitive examining

system we have worked so hard to establish. In order to protect our examinations from compromise, particularly when we use written tests, we currently follow procedures in which we compose tests of differing series of similar questions and this scrambling technique barely keeps us ahead of those who would exploit our tests for personal or commercial gain. Without an exemption for materials used in the examining process, we could not defend our tests against compromise. In addition, if the names and ratings of other applicants must be revealed to any requesting applicant, questions arise as to whether or not the rights of privacy of these other applicants have been violated.

We also believe that medical records of employees and applicants should not be generally available, even to the applicant or employee, when this information could be harmful to him. Our regulations provide for release of this information to the person requesting it only through a doctor of his choice. We believe that this procedure should be maintained.

Time has permitted only a brief discussion of the problems we anticipate if Commission operations, particularly those discussed above, are not exempted from the provisions of the bill. We strongly urge that the Committee consider the impact of the inclusion of all the records maintained by the Civil Service Commission in the disclosure and access provisions of this bill. We recommend that the Committee restore exemptions for the Commission, and for the military departments, which we understand have similar problems. We offer the following language to provide minimum protections for our operations:

"(4) investigatory and examining material maintained for the purpose of determining initial or continued eligibility or qualification for

"(A) Federal employment,

"(B) military service,

"(C) employment under Federal contracts,

"(D) access to classified information; or

"(5) medical information concerning a mental or other condition of a Federal employee or applicant for Federal employment of such a nature that a prudent physician would hesitate to inform the person suffering from the condition of its exact nature and probable outcome, except that this information will be disclosed to a licensed physician designated in writing by the individual for that purpose."

We believe that exemptions such as those stated immediately above will enable the Commission to continue to carry out its responsibilities for maintaining a superior Federal work force. We recognize our obligation to furnish to Federal employees and applicants for employment all information possible concerning them consistent with these responsibilities.

By Direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,  
Chairman.

## SECTION-BY-SECTION ANALYSIS

The findings of the bill state that individual privacy is affected by the collection, maintenance and use of individually identifiable data by the Federal Government and that control of such systems of data is necessary to insure privacy.

The purpose of the act is to provide safeguards for the collection and use of such records, identify record systems, provide reasonable access by individuals to their records, and provide civil remedies for violations of its provisions.

Section (a) defines various terms used for the purposes of this act.

Section (b) prohibits dissemination of records outside the agency except when requested or permitted with prior written consent by the affected individual. Other exceptions are when it is used for a legitimate routine purpose defined under formal rulemaking; submitted to another governmental unit for a law enforcement activity authorized by statute upon written request; to the Census Bureau for activities pursuant to title 13, U.S.C.; for statistical use when provided in a non-individually identifiable form; pursuant to a showing of a compelling circumstance affecting the individual's health or safety and then only upon transmittal of notice to the individual; when transferred to the National Archives or provided to Congress.

Section (c) requires an accurate accounting of the fact and nature of any dissemination of a record, which accounting shall be retained for five years and be made available upon request to the affected individual. This section also requires that an agency inform others about any correction or notation of dispute disclosed to another agency within two years preceding the making of such correction on a record.

Section (d) requires an agency to grant access by an individual to his records for inspection and/or copying; permits individuals to request correction of records, and provides for an interagency review of refusals to correct upon request. This section also permits an individual to file a concise statement setting forth his reasons for disagreeing with an agency's refusal to amend the record, requires the agency to clearly note the disputed portion of the record, and permits the agency to include a rebuttal statement.

Section (e) enumerates agency requirements to inform individuals of their rights when supplying information and also requires annual publication in the *Federal Register* by each agency which maintains a record system the name and location of each system; the category of persons and records maintained in each system; use policies of each agency and the title and business address of the person responsible for such system.

It also prohibits any Federal agency from maintaining any record concerning the political or religious belief or activity on any individual unless expressly authorized by statute or the individual himself.

Section (f) also states that each agency shall under the Administrative Procedure Act set rules providing for access to requested records; describe routine uses of maintained records; establish proce-

dures for amending records and keeping them in a timely, relevant and accurate fashion; establish procedures for disclosing medical records to individuals; and may set fees for providing copies of requested records except that no fees shall be charged for search or review of records.

Section (g) provides a civil remedy for 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 and an adverse effect results. Suit may be brought in a district where the complainant resides, does business, where the records are located, or in the District of Columbia. The complainant may recover actual damages and costs and attorney fees if the agencies' infraction was willful, arbitrary, or capricious.

Section (h) provides that for the purposes of subsections relating to disclosure, access or civil remedies, a minor or an adjudged incompetent may be represented by his legal guardian.

Section (i) makes unlawful possession of or disclosure of individually identifiable information by a government employee punishable by a fine not to exceed \$5,000 and also provides that any person who requests or obtains such a record by false pretenses is subject to a fine not to exceed \$5,000.

Section (j) states that except as to certain agency conditions of disclosure and requirements, records determined under formal rulemaking maintained by the CIA and records maintained for law enforcement purposes are exempt from the provisions of the act.

Section (k) permits an agency head to exempt any record or system of records through formal rulemaking from the provisions of subsections relating to disclosure, accounting availability, access availability, and certain agency rules; records which are classified; are maintained for Secret Service protective purposes; or required by statute to be maintained solely for statistical reporting or research purposes.

Section (l) provides, among other things, that records accepted by the National Archives under section 3103 of title 44, U.S.C. shall be considered for the purposes of this act to be maintained by the depositing agency.

Section (m) provides for an annual report by the President listing the number of records contained in any system of records exempted under sections (i) and (j) and reasons for such exemptions.

Section 6 sets the effective date of the act at 180 days after enactment except for section (f), which becomes effective on the date of enactment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 5, UNITED STATES CODE

## CHAPTER 5—ADMINISTRATIVE PROCEDURE

## SUBCHAPTER I—GENERAL PROVISIONS

- Sec.  
 500. Administrative practice; general provisions.  
 501. Advertising practice; restrictions.  
 502. Administrative practice; Reserves and National Guardsmen.  
 503. Witness fees and allowances.

## SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

- Sec.  
 551. Definitions.  
 552. Public information; agency rules, opinions, orders, records, and proceedings.  
 552a. *Records about individuals.*  
 553. Rule making.  
 554. Adjudications.  
 555. Ancillary matters.  
 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.  
 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.  
 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses.  
 559. Effect on other laws; effect of subsequent statute.

## SUBCHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- Sec.  
 571. Purpose.  
 572. Definitions.  
 573. Administrative Conference of the United States.  
 574. Powers and duties of the Conference.  
 575. Organization of the Conference.  
 576. Appropriations.

## SUBCHAPTER I—GENERAL PROVISIONS.

## SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

§ 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 (c) (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 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 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.

(c) **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 owned 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 procedures, 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 the record 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 (b) 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) and (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.

(d)(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 552 of this title, to exempt any system of records within the agency from any part of this section except subsections (b) and (c)(1)(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 investigat-

tors, 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 552 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) investigating 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.

(h)(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, 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.

\* \* \* \* \*

## APPENDIX

### CORRESPONDENCE REGARDING COST ESTIMATE

EXECUTIVE OFFICE OF THE PRESIDENT,  
OFFICE OF MANAGEMENT AND BUDGET,  
Washington, D.C., September 19, 1974.

HON. WILLIAM S. MOORHEAD,  
*Chairman, Foreign Operations and Government Information Sub-  
committee, Committee on Government Operations, House of Rep-  
resentatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is to confirm the essence of our discussions last evening in regard to the costs of implementing H.R. 16373, consistent with the amendments which we have proposed.

I would like to reiterate that it is extremely difficult to develop any reliable estimate of the cost of this legislation, because it plows new ground in areas where we have virtually no operating experience, and there are so many interdependent variables of unknown magnitude.

We have been working with the Executive Departments and Agencies since May to develop cost estimates in connection with the privacy provisions transmitted to you in our letter of June 19, 1974. Those efforts have not yielded firm estimates, but rather have underscored the difficulty which operating organizations are experiencing in attempting to quantify the costs involved. Some of the major imponderables we have encountered are:

There is considerable uncertainty, as confirmed by Senator Ervin's study, about the total number and magnitude of personal data systems currently being maintained by various government agencies.

The disincentives to collecting personal data inherent in this legislation will probably result in a reduction in the amount of data collected and stored in various agency systems, and possibly the elimination of some existing systems. However, the disincentives to transferring personal data between agencies will have the countereffect of stimulating more systems to meet the unique needs of a given agency. There is considerable uncertainty about the offsetting effects of these two factors.

It is difficult to predict the extent to which individuals will exercise the rights afforded to them by this bill. For example, how many people will inquire whether they are included in specific agency systems and how many will request copies of their data or modifications of the data maintained about them.

There is uncertainty about the extent to which reduced efficiencies in computer utilization resulting from the introduction of safeguards will be offset by technological improvements being developed by industry.

For the foregoing reasons, our estimate cannot have a high degree of precision. Within those limitations, we believe the costs of implementing H.R. 16373 will be on the order of \$200 to \$300 million per year over the next four to five years, with an additional one-time start-up cost of about \$100 million, which would be expended within the first two years. As previously indicated, there are some possible offsetting factors which could reduce the actual cost. However, we believe that a year's operating experience will be necessary before greater precision in the cost estimates can be achieved.

There is no doubt that privacy safeguards of the type envisioned in this bill will result in added costs of operations. We have appreciated the concern of the Subcommittee about costs, and their continued efforts to minimize the cost impact as the bill has evolved. Our estimate of the costs associated with the current draft are less than half of the costs which we had estimated for earlier drafts which were under consideration.

Sincerely,

ROBERT H. MARIK.

*Associate Director for Management and Operations.*

**ADDITIONAL VIEWS OF HON. BELLA S. ABZUG (CONCURRED IN BY HON. JOHN E. MOSS, HON. DANTE B. FASCELL, HON. BENJAMIN S. ROSENTHAL, HON. JOHN C. CULVER, HON. JOHN CONYERS, JR., HON. JAMES V. STANTON, HON. CARLISS COLLINS, HON. JOHN L. BURTON, AND HON. GILBERT GUDE)**

H.R. 16373 is the product of many months of hard work by the members and staff of the Foreign Operations and Government Information Subcommittee. During the course of these months, all of us who have been involved in the process of writing this legislation have learned a great deal about the complex concept of "privacy". Fortunately, as a result of this learning experience, instigated by the introduction of several excellent privacy bills, the bill which the full Government Operations Committee reported out on September 24th represents an improvement in a number of ways, both organizationally and substantively, over earlier drafts of this bill. There is still room for much improvement, however. We feel that there are several additions and changes which must be made to strengthen the bill. In view of the difficulty of maintaining a quorum and the pressure of time, these could not be effectively considered at the full committee meeting, but will be presented when the bill reaches the floor.

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.

**EXEMPTIONS**

We start with the premise that exemptions from the provisions of this bill and of any bill designed to protect individual rights of privacy are justified only in the face of overwhelming societal interests. Never should economy or efficiency or administrative convenience be used to justify the exemption from or modification of any of the safeguard requirements set forth in this bill. Moreover, when exemptions must be made, they must be defined in very specific terms.

The Committee bill sets forth six categories in which exemptions may be made: (1) records maintained by the C.I.A., (2) certain records maintained by criminal law enforcement agencies, (3) information affecting national security within the scope of Section 552(b) (1) of Title 5, U.S. Code, (4) investigatory material compiled for law enforcement purposes, both criminal and civil, (5) records maintained in connection with certain protective services, and (6) records required by statute to be maintained and used solely for statistical research or operating. Within any of these categories the bill delegates

to the heads of the various Federal agencies the task of balancing individual rights against societal interests and of deciding which is paramount. Few guidelines have been set forth, however, to enable agency heads to perform this rather delicate task.

We feel that there are, at most, only three areas where societal interest can be paramount to the individual rights provided by this bill: (1) where granting an individual access to his or her records would seriously damage national defense or foreign policy; (2) where such access would interfere with an active criminal prosecution; and (3) 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. By narrowing the exemption categories and defining them in specific terms related to the use of records rather than to the agency maintaining them, Congress could provide agency heads with standards to meet in exercising their rule-making authority to grant exemptions. Only in this way can we be assured that the constitutional rights of individuals will be protected and will not be sacrificed to administrative discretion, expediency or whim.

#### DAMAGES

The bill in its present form contains provisions for the assessment of actual damages, court costs, and attorneys' fees in cases where an agency is found to be in violation of the law. A provision allowing court assessment of punitive damages, which is contained in the Senate bill (S. 3418), was stricken in full committee. We feel strongly that this provision should be restored to the bill. Actual damages resulting from an agency's misconduct will, in most cases, be difficult to prove and this will often effectively preclude an adequate remedy at law. Moreover, if we are concerned with effectively deterring the willful, arbitrary, or capricious disclosure or transfer of protected records, a provision permitting a court to assess punitive damages or, at the very least, liquidated damages is essential.

#### THE NEED FOR AN ADMINISTRATIVE AGENCY

Unlike the Senate bill, H.R. 16373 contains no provision for the establishment of an administrative body to oversee the implementation of this legislation. We recognize the fact that some of our colleagues feel it is wiser to wait and see how Federal agencies respond to privacy legislation before establishing any oversight mechanism. No one, however, wants to repeat the experience of the Freedom of Information Act in holding out rights to individuals but providing them only with the costly and cumbersome mechanism of a judicial remedy. Therefore, we would amend the bill to provide for the establishment of an administrative body to mediate conflicts between agencies and individuals, to investigate complaints, hold hearings, and make findings of fact.

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 coordinating the privacy programs of the various Federal agencies can we be assured of uniform, effective enforcement of the rights guaranteed by this bill.

BELLA S. ARZUG.  
JOHN E. MOSS.  
JAMES V. STANTON.  
GILBERT GUDE.  
JOHN BURTON.  
DANTE B. FASCELL.  
JOHN CUTLER.  
CARDISS COLLINS.  
BENJAMIN ROSENTHAL.  
JOHN CONYERS, JR..

**ADDITIONAL VIEWS OF HON. JOHN N. ERLENBORN  
(CONCURRED IN BY HON. PAUL N. McCLOSKEY, JR.,  
HON. SAM STEIGER, HON. CHARLES THONE, AND HON.  
ROBERT P. HANRAHAN)**

The Committee states in this report, "H.R. 16373 attempts to strike that delicate balance between two fundamental and conflicting needs—on the one hand, that of the individual American for a maximum degree of privacy over personal information he furnishes his government, and on the other, that of the government for information about individual citizens which it finds necessary to carry out its legitimate functions."

We commend the members of the Committee for keeping this objective in mind when writing the bill. We believe that they have failed to follow it, however, with regard to two important kinds of information. Should the bill reach the Floor of the House, we shall therefore offer an amendment to add these two kinds of information to the categories which may be exempted from the provisions of the bill which permit individuals to have access to records maintained about them. The two, which we urge should be made items (5) and (6) in subsection 552a(k), are:

—investigatory material compiled solely for the purpose of determining initial or continuing eligibility or qualification for Federal employment, military service, Federal contracts, or access to classified information; and

—testing or examination material used for appointment, employment, or promotion in the Federal service.

With regard to these types of records, individual access would impair the carrying out of legitimate functions of government. Those functions are so important that the principle of access to records should be put aside here.

**INVESTIGATORY MATERIAL**

Government agencies must be able to choose the best applicants for employment and military service if they are to fulfill their missions most effectively. They must be able to select the best contractors to perform additional necessary work. They must be especially careful in certifying which individuals may view information the disclosure of which could damage, in some cases severely, the national defense or foreign policy of the United States.

To have the ability to make these important judgments, agencies need honest opinions about the people they are investigating. The Civil Service Commission, speaking for all agencies, has testified that "Our long experience in investigations indicates that those who give

witness to the qualifications and integrity of others are ordinarily far more candid when the information is given under pledge of confidence than they are when they presumably are speaking for publication." If the information were to be available to the individuals to whom it pertains, the government could not make a pledge of confidence to the people whom it solicits for personal opinions. Future information would not be forthcoming. Past information would be revealed, violating the privacy of the people who gave it. This would be a most unfortunate result.

#### TESTING MATERIAL

The military services and the Civil Service Commission test applicants to determine eligibility and ratings for military placement and on merit system schedules. Individuals are informed of their scores on these tests and how the scores compare with those of other people who took the same examinations. Revealing the test questions and answers in addition would not help the individuals in any way; it certainly would not protect their privacy. This disclosure would have only one result: the examination material would be made public. As a result, to make all tests fair, examining agencies would have to develop a new version of each test for each occasion on which it would be given. This would be a needless expense.

In short, we seek not the invasion of privacy but the furtherance of important government objectives in areas where privacy considerations do not weigh heavily. We support most emphatically the protection of personal privacy, and offer this amendment only to improve a bill which is directed toward that end.

JOHN N. ERLÉNBOEN,  
PAUL N. McCLOSKEY, Jr.,  
SAM STEIGER,  
CHARLES THONE,  
ROBERT P. HANRAHAN.