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ABSTRACT

In 1967 Congress passed the Freedom of Information Act (FOIA), which included nine examptions allowing the Executive branch of government the privilege of withholding information from the public in cases where disclosure would constitute a threat to national security. Responding to Congressional charges that the freedoms extended by the FOIA exemptions were abused, President Nixon directed a study committee to make recommendations for updating classification of information procedures. The product of this committee, Executive Order 11652, was the first order to overhaul the national secrecy classification system in eighteen years. Effective June 1, 1972, top secret information would be completely declassified at the end of ten years, secret information at the end of eight years, and confidential information at the end of six years. (CH)

THE FREEDOM OF INFORMATION ACT, EXECUTIVE ORDER 11652

AND

THE SECOND SESSION OF THE NINETY SECOND CONGRESS

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THE FREEDOM OF INFORMATION ACT, EXECUTIVE ORDER 11652, AND THE SECOND SESSION OF THE NINETY SECOND CONGRESS

"If secrecy in some cases remains a necessity, it also can easily become a means by which Government dissembles its purposes, buries its mistakes, safeguards its reputation, manipulates its citizens, maximizes its power and corrupts itself." -- Arthur Schlesinger, Jr., New York Times Magazine, February 6, 1972

When the second session of the Ninety Second Congress convened early in 1972, the stage was set for a large-scale assault on secrecy in government as practiced by the Nixon administration, Indeed, the problem of secrecy--exemplified by the invocation of Executive Privilege and by classification of documents--was not unique to the Nixon tenure in the White House. But the Pentagon Papers controversy of the previous year still echoed in the halls of Congress and no less an authority than noted attorney Luis Kutner was predicting confidently that, "Certainly, all the furor created by those documents is likely to curtail the license of Washington bureaucrats to label almost anything as secret so the government can avoid bad publicity."[1]

It was not to be. None of the subcommittee hearings, none of the floor action, none of the executive actions in 1972 produced any legislation aimed at correcting abuses of the 1967 Freedom of Information Act. Several bills were introduced. All died at adjournment. But Freedom of Information did get a fairly complete airing in both houses, and reintroduction of several of the dead bills was expected in the Ninety Third Congress.

"It's difficult to articulate the magnitude of the problem," one observer wrote early in 1972. "Things had nearly gotten to the point of scandal. We were almost a country without a history because so much of it was stored in warehouses."[2] Nor was the situation improving. Robert Goralski reported that the Army alone was churning out about 900,000 cubic feet of paper reports each year with about one of every six documents classified.

There are, Goralski reports, 160-million classified documents from World War II, 414 million of which recently were reviewed by a group of Air Force Reserve officers over a six-month period. On this basis:

> Allowing for full-time work on declassification, one man should be able to review each year about 200,000 documents. Thus, it would take 800 man years just to get us through World War II. Another 1,600 man years would be needed to review the accumulated stockpile covering 1946 through 1954. The accumulation since then makes it even more imperative to seek an alternate solution.[3]

The current document-by-document approach to declassification of World War II documents, Goralski observes, is time-wastingly futile and "horrendously expensive."

Elliot Carson notes in the Wall Street Journal (September 6, 1972, p. 1) that the bulk of papers already declassified:

> . . . hardly seem worth the prolonged secrecy. Samples: a telegram reporting the loss of the battleship Arizona at Pearl Harbor. A design for a slingshot device for harmlessly detonating German rockets during World War II. An analysis of Argentina's method of selecting officers. And a bulky report on the railroad routes of the Balkan Peninsula.

But it was hardly this type of classified or hidden-away information that particularly infuriated congressmen, journalists, scholars and other seekers of information on governmental activity and regulation. The actual and theoretical complaints which had impelled Congress to pass the Freedom of Information Act six years before still obtained.

That the Act needed strengthening came as no surprise to former chairman John Moss of the House Foreign Operations and Government Information Subcommittee. The Act, he said, was:

> . . . the product of many, many compromises to get something as a beginning, on the statute books and shore up a public right of access to information. It was clearly an imperfect act, but there were many hours of negotiations to have anything survive.[4]

The Act's nine exemptions to mandatory release of information were causing all the trouble. Under Executive Order 10501--issued by President Eisenhower and followed with little change by succeeding administrations--departments and agencies regarded the FOIA exceptions as mandating withholding and thus, as Harold D. Lewis, former Director of Information in the Department of Agriculture, told 1972 House investigators, "It actually was necessary to clarify that they made it possible, not necessary, to withhold information."[5]

And, another observer points out, the Act was:

> . . . of little or no value to the public in gaining access to the records. . . . Indeed, it has had precisely the opposite effect. It is cited as statutory authority for withholding of virtually any piece of information that an official or agency does not wish to disclose.[6]

Still, department and agency heads paid lip service to the Act. For, testified Stewart Hunter, former Associate Director of Information for Public Services in the Department of Health, Education and Welfare, " . . . to be in favor of the 'public's right to know' is to be against sin and in favor of general righteousness."[7]

Righteousness aside, the penchant for non-disclosure persisted. The chairman of the House Foreign Operations and Government Information Subcommittee, John Moorhead, noted that but three authorized categories of classification existed--top secret, secret and confidential--but claimed there were sixty-three other secrecy terms ranging from:

> SPECAT, which the Defense Department uses on some of its hidden records, to CRYPTO which the Department of Transportation uses when its employees play the secrecy game. Such rubber stamps as LIMDIS, ATOMAL, NODIS and NOFORN are standard equipment in the desk drawers of thousands of bureaucrats.[8]

Moorhead found twenty eight agencies classifying information and

> . . . 55,000 arms pumping up and down in Government offices stamping "confidential" on stacks of Government documents; more than 18,000 . . . employees are wielding "secret" stamps and a censorship elite of nearly 3,000 bureaucrats have authority to stamp "top secret" on public records.[9]

Former Defense Department classifier William G. Florence maintained that 99.9 percent of existing classified documents ". . . do not warrant classification . . . [or] contain information the unauthorized disclosure of which actually could be prejudicial to the defense interest of the Nation."[10]

And, in the area of foreign relations--the second major area in which administrative agencies claim exemptions to the Freedom of Information Act--former State Department staffer Arthur Schlesinger, Jr. holds that, "There have been fewer greater frauds . . . than the idea put over by the executive on Congress and public opinion that only those with access to classified information know enough to have a judgment on questions of foreign policy." He maintains that 99 per cent of such information is already available in the Times and that, "The myth of inside information--'if you only knew what we knew'--is essentially a trick to obstruct democratic control of foreign policy and defend the monopoly of the national security bureaucracy."[11]

With so much classification--James McCartney notes--". . . administrators must 'leak' information in order for the Government to function--for programs to receive support. The result is what might be called a pattern of selective leaking for political purposes."[12]

And, referring to leaking of information to interested foreign powers, Senator Mathias of California told Senate investigators that "Even foreign governments are sometimes made privy to information that is carefully kept away from Congress."[13]

Moorhead investigators, looking into Executive Order effects on enforcement of FOI Act exemptions, found that there had been over 2,000 investigations of security leaks over the past five years, and that:

> No government employee was taken to court because he was too slow on the draw with his secrecy stamp, but 2,000 of them received administrative penalties--reprimands or loss of pay. "And how many times" -- we asked the agencies -- "did you look into cases of too much secrecy?" The answer: . . . There was not one single reprimand for overclassification.[14]

In such a situation, more than one observer has noted, self-concern for job stability and for advancement in the vast federal bureaucracy do not argue on the side of cooperation with those seeking information from government personnel or from the federal files.

Moorhead also took exception to the time required to answer requests for information. The subcommittee found that major Federal agencies took an average of thirty-three days, and another fifty days, on the average, were required to act upon appeals filed under FOI Act provisions.[15]

Richard Wolf of the Georgetown University Law Center's Institute for Public Interest Representation testified that a few requestors undaunted by delay, have sometimes exercised the Act's provision for recourse to the courts. But, "If the Federal bureaucracy does not quickly change its attitude and perform within the spirit of the act," he said, "the statute will become . . . only a litigating lawyer's dream." And this, Wolf foresaw, would become a further deterent to the Act's effectiveness.

> Will a person seek information from his Government if he knows it will mean bearing the cost of a court suit and probable appeal before he gets it? Will a reluctant agency be able to drain all utility from a request, followed by many months of litigation? I think these questions are as important as determining what material is exempt from disclosure and what must be released.[16]

Johnston and Mamorek found that none of the court suits initiated under the Act as of early 1972 had been initiated by newspapers. This was partially due, they found, "to the nature of the newspaper business itself. The element of time involved waiting for the determination of

a lawsuit, and the cost . . . tend to discourage its use."[17]

Louis M. Kohlmeier found another reason for such journalistic reluctance to use the courts:

> Even if a lawsuit is successful, the information that an agency is required to release then is not the exclusive property of the newspaper that brought suit and is available to competitors and [here] we are dealing . . . with the exclusives which are just part of the business.[18]

Kohlmeier feels that the a ~ has benefited the press, however, in that other non-press suits have provided useful precedent in forcing government release of information.

Chairman Moorhead found press refusal to invoke the court appeal and other provisions of the Act puzzling. Indeed, at the outset, it had been assumed the media would champion using the Act. "Various organizations representing the news media were among the stanchest [sic] supporters of the work of this subcommittee and of the freedom of information legislation," Moorhead noted.[19]

Why, the subcommittee asked a panel of journalists, should this be? Publisher R. Peter Straus offered one reasen: "I don't think everybody in every newspaper and every TV station knows that there is . . . a Freedom of Information Act."[20]

Louisville Courier-Journal correspondent Ward Sinclair testified, "I think one of the problems is that there simply aren't enough hardnosed editors around the country who are going to insist and push [the Act] until they get the information that they should be seeking out."[21]

Even when information is leaked to a reporter, U-P-I correspondent Roy McGhee testified," it is colored. It places an added responsibility on the reporter to make a judgment, which frequently he is unable to do."[22]

McGhee, Sinclair and Straus cited difficulties they had experienced in breaking the government stranglehold on information. But even when the stranglehold is broken via court action, there are ways of practicing obfuscation.

Editor John Seigenthaler of the Nashville Tennesseean testified that, for a story on FHA practices, he went to court, citing the Department of Housing and Urban Development (HUD) as defendant. Seigenthaler wanted to identify the appraiser of a Nashville home, but the lower court held that to name individual appraisers would be to make all appraisers "overly cautious" and they could be expected to have a subsequent tendency "to undervalue the properties to be on the safe side."

Eventually, a higher court ordered the FHA to produce the appraisal papers but the name of the appraiser was to be deleted. When HUD eventually produced the paper, Seigenthaler testified, "it was illegible, totally and completely illegible."

Subsequently, the lower court decision was reversed, legible papers were produced and the appraiser's name eventually was released.[23]

Sinclair testified on what might be called "the runaround" technique:

> My particular difficulties have come mainly from lawyers who, as it turns out, are more or less in a position of being the ultimate censor. I can appeal to [Interior] Secretary Morton today, tomorrow and the next day and my appeal ends up in the lap of a lawyer who turned me down in the first place.[24]

Attorney Harrison Wellford, also testifying before the subcommittee, entered into the record the statements he made a year before to the Senate Subcommittee on Separation of Powers. His chief difficulty, it appeared, had been securing information on pesticides from the Federal Drug Administration. He listed several practices employed by FDA to skirt disclosure applications.

One was what Wellford called "the contamination technique" in which an agency takes "items of unclassified material that may prove embarrassing and combines them with several items of classified information. . . . Result: the whole sum is classified."

He found that trade secret exemptions under the Act were being applied to "virtually all information which a [private] company does not want disclosed." In fact, Wellford added, "much of the information classified as trade secrets . . . is common knowledge within the industry. The only group not familiar with it is the public."

A third technique is what Wellford refers to as "specificity," i.e., being required to state the specific document desired when applying for its release. According to Wellford, "the only way to get the file number is to have access to the indices which list the file numbers.

When we requested the index, we were told that that was also classified information, and we were denied it." Indeed, Wellford was told that his request for information was so unspecific that it would take 1.6 years and $91,840 to gather and prepare materials for public view.

Wellford also found it a common tactic for an agency to establish a file involving the investigation of violations of a federal law or regulation, then conceal all information on a firm or product by dropping it into that newly-established file.[25]

As the Moorhead subcommittee continued its hearings--doing so with an implicit purpose of forcing the Executive to alter its classification ways--President Nixon was acting to head-off any Congressional moves. In January 1971, he had directed a study committee to make recommendations for updating classification procedures. The committee was headed by Assistant Attorney General William Rehnquist with David Young of the National Security Council staff coordinating the study.

Subcommittee staff director William Phillips notes that some confusion apparently obtained during the study. "There doesn't seem to be anybody willing to step forward to claim the credit for authorship," of the resulting Presidential Executive Order 11652, he said.

> I have talked to some of my friends who are in the technical end of the classification system in the executive branch and they tell me . . . that the problem with the new order is that it was written by people upstairs who didn't know anything about the classification system.

> But I have also talked informally to other people at a higher level in Government and they tell me that it was written by the bureaucractic classifiers downstairs. Now somewhere in between the truth lies.[26]

Executive Order 11652 was the first order to overhaul the national classification system in eighteen years. When it finally emerged from the study committee in early March 1972, Moorhead called it "a very restrictive document," and said it appears to be "an order written by classifiers for classifiers."[27]

The order restricts document classification to Top Secret, Secret and Confidential categories and states:

> Each person possessing classifying authority shall be held accountable for the propriety of the classifications attributed to him. Both unnecessary classification and overclassification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security.[28]

The new order, which went into effect June 1, 1972, provides for declassification of Top Secret documents to the Secret category after two years, further declassification to Confidential after another two years, and full declassification at the end of another six years. Thus, Top Secret information would be completely declassified at the end of ten years, Secret information at the end of eight, and Confidential at the end of six years.

However, there are exemptions. When a classifier deems it advisable, he may extend the Top Secret category declassification schedule if it is:

> 1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.
> 2) Classified information or material specifically covered by statute or pertaining to cryptography, or disclosing intelligence sources or methods.
> 3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.
> 4) Classified information or material the disclosure of which would place a person in immediate jeopardy.[29]

Thirty years after classification, documents are to be automatically declassified, although departments may request exemption from this provision,[30] a reservation that may still displease scholars and other researchers.

Although the President put classifiers on notice to abjure overclassification, the penalties for such practice are notably vague. An overclassifier is to be:

> notified that his actions are in violation of the terms of this order or of a directive of the President issued through the National Security Council. Repeated abuse of the classification process shall be grounds for an administrative reprimand . . .[31]

On the other hand, underclassifiers face more specific and stringent action:

> The head of each Department is directed to take prompt and stringent administrative action against any officer or employee of the United States . . . determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.[32]

The National Security Council is responsible for implementation of E.O. 11652. Assistance is provided by the newly-established Interagency Classification Review Committee.[33]

But an old classification hand, former Defense Department expert William G. Florence, told House investigators the new Executive Order "does nothing to stop the proliferation of classification authority or eliminate unnecessary classification of information." His analysis showed the new order to be rife with compromises of views, "with the defensive attitude toward secrecy the clear winner." Overall, he found E.O. 11652 "Manifestly less than adequate,"[34] and observed that, "There is no reason to believe that the classifiers will be more inclined under the new order to cancel the classification on a document for the benefit of a private citizen than they are now."[35]

Chairman Moorhead was equally critical of the new order, keeping up a more or less steady stream of vituperation over the next several months. On March 21, he called E.O. 11652 "a shoddy technical effort," adding, "The administration has labored for 14 months on the new Executive Order and has brought forth a mouse."[36] On May first, he called the order "a nod to the democratic ideal."[37] On May third, one month before E.O. 11652 was to take effect, he noted that much preparation and familiarization would be necessary to give the order full effect but that no

guidelines for implementation had been issued. He called upon President Nixon to postpone the effectivity date so Congress would have "adequate opportunity to consider a statutory alternative."[38]

On September eleventh, a little over three months after the effectivity date, Moorhead was again on his feet in the House, maintaining that there was no enforcement of the over-classification strictures. "I do not mean to imply that there has been inadequate enforcement," he said. "I mean to state flatly that there has been no enforcement."[39]

Early in the session, Moorhead had introduced H.R. 15172 titled "Freedom of Information Act Amendments of 1972," which, he told the House, ". . . strikes that delicate balance between the conflicting needs of the Congress and the Executive, and the public as a whole in this vital area."[40]

The bill sought to plug the many loopholes through which various agencies impede the full and free flow of information, but (in what Phillips labels a case of "legislative strategy"[41]) it put no time limit on responding to requests for government documents.[42] Moorhead sought to correct this with H.R. 17142, introduced shortly before final Congressional adjournment. It called for answering requests made under the Freedom of Information Act within ten days and would allow twenty days to answer any subsequent appeals.[43]

The subcommittee's final report called for the same time periods, adding that "This reform would perhaps be most significant in the case of the news media requests under the act, which have not been significant in number."[44]

Similar bills were introduced in both Houses of Congress, but, on final adjournment, all died in committee.

Former Johnson administration Press Secretary George Reedy, in testifying before the Moorhead subcommittee, was not encouraging in assessing the good to be derived from further legislation on Freedom of Information. He regarded such legislation as encroaching on the prerogatives of the executive," and felt that "you would get one of those 'Mr. Marshall has made his law, now let him enforce it' propositions later." Furthermore, Reedy testified," . . . even if you could do it, I think that all you would get . . . would be memorandums that [are] extremely sterile. I do not think this would advance the cause of freedom of information or access to information."[45]

Thus, at the end of 1972, little had been accomplished in broadening the scope of government information being released to Congress and the general public--either through legislation or through the applications of Executive Order 11652. In fact, Moorhead subcommittee staff director William Phillips noted that " . . . some six months after the effective date of the new [Executive] order, only about half of the Executive departments and agencies subject to its provisions have issued regulations to implement it."[46]

And overclassification and immoderate recourse to the Freedom of Information Act to refuse release of government documents continued. Felix Belair, Jr., of the New York Times found, as of five months after E.O. 11652 effectivity, access was being "throttled by bureaucratic confusion, timidity and prohibitive costs," with the output "still no more than a trickle."[47]

Within a week of the June first date, the Times had submitted fifty-five requests to the State Department, seeking information on thirty-one foreign policy questions and the declassification of documents thought to contain the desired information. The State Department invoked the "specificity" argument on document identification and estimated a cost of $7,000 or more to locate and review the items. The Times refused to pay, but found subsequently that most of the sought-after information was well-known anyway, and available elsewhere.[48]

The Government's arguments from the Pentagon Papers court tests remain unchanged. "If you knowingly utilize documents which have been stolen by another from the government," Assistant Attorney General Kevin Maroney told the American Society of Newspaper Editors in early 1972, "you run the risk of being in violation of state and federal laws relating to receipt of stolen property."[49]

Maroney also claimed that "the press should give substantial weight and a presumption of good faith to the fact that a document has been classified by an official of the government."[50] The claim was perhaps ill-timed since it was made at a time of growing mistrust of Governmental information policies and of a demonstrable credibility gap.

But there apparently is a body of lawmakers who will not dispute Maroney's claim. Freedom of Information Center editorial assistant Jean Stevens maintains, "Many Congressmen still believe that the executive power to make secret decisions on foreign [and, presumably, defense] policy in a nuclear age must not be diluted." Furthermore, Stevens relates:

> . . . many congressmen are comfortable in their long-established relationships as clients of executive departments, with the accompanying personal power. They have no personal reason to seek an adversary relationship with the executive, and . . . this inertia may constitute the greatest obstacle to change.[51]

House subcommittee staff director William G. Phillips has noted that: ". . . most members of Congress aren't particularly concerned about classification. Many of them don't understand it. It's not a big issue."[52]

James McCartney sees, ". . . no signs that Congress is on the verge of a meaningful attack on classification."[53] And The Nation maintains that, "A certain proportion of the effort that goes into reducing secrecy comes under the head of 'ritual noises' -- those who are vocal on the subject may have no real intention of doing anything to curb the evil."[54]

It is likely, however, that in 1972, Congressmen learned much about Executive information practices and ways of skirting the Freedom of Information Act. It is even possible that the threat of Congressional action and growing public discontent may have loosened the floodgates of disclosure a small crack. On the other hand, it is also possible that the Nixon victory in the 1972 Presidential election could be regarded as a public mandate--or at the least a public acceptance of the need--to continue present practices.

Whether issuance of Executive Order 11652 was a sop to public critics, or whether it was issued in a move to anticipate and thus avoid any Congressional action to extend and amplify the Freedom of Information Act is not known and may never be known. Assuredly, it

failed to placate Representative Moorhead and others on his Foreign Operations and Government Information Subcommittee. Neither did it placate Senators Ervin, Fulbright, Cranston, Javits and others in the upper house who had sought in various ways to inveigh against Executive secrecy.

By substituting "national security" for "national defense" (the term used in old Executive Order 10501), the administration apparently enlarged its scope and authority for withholding information. To say the least, E.O. 11652 certainly has not resulted in information flowing unimpeded from the various departments and agencies.

As Francis E. Rourke of The Nation observed nearly two months after the order went into effect:

> . . . rather than seeking to dispel the widespread suspicion that the government is telling lies, the Administration has sought to suggest instead that the public is also being lied to by the large news organizations. Since the media generate the principal pressure for open government in a democratic society, a successful effort to weaken their standing in the public eye will greatly increase the capacity of an administration to govern in secret.[55]

Assuming that the media skirts are clean with regard to truthfulness, fairness and social responsibility, James McCartney's observations take on pertinency in the struggle for freedom of information and the right to know.

If Congress, with its powers of prestige and the subpoena, cannot crash the classification system for itself, the plight of the press and broadcasting is even more serious. In part, however, this is the news media's own fault. Perhaps their most notable failure has been the failure to dramatize the classification problem as it has grown over the years. . . As in Congress, it hasn't been a "big issue." If it is not made "a big issue," reform is unlikely.

Until that day comes--until a new and effective system is devised--the news media have only one weapon with which to fight back--the aggressiveness of individual reporters and editors in seeking out information and getting it into print. If reporters and editors do not seek out information, regardless of whether it is classified; if they don't try to spot dissidents and get them to talk or to leak material, information will not get published. The press has no way of getting its hands on 20 million classified documents. It cannot do the basic job of reform. But the system can be beaten now and then. To the credit of the press, it has been beaten.[56]

FOOTNOTES

[1]. Luis Kutner, "Freedom of Information: Due Process of the Right to Know," The Catholic Lawyer, vol. 18, no. 1 (Winter 1972) p. 64

[2]. Dom Bonafede, "White House Works to Overcome Obstacles in Ending Secrecy of Some Documents," National Journal, April 15, 1972, p. 657

[3]. Robert Goralski, "How Much Secrecy Can a Democracy Stand?" Lithopinion, vol. 7, no. 3, issue 27, 1972, p. 79.

[4]. U.S. Congress. House. Hearings before a Subcommittee of the Committee on Government Operations. "U.S. Government Information Policies and Practices -- Security Classification Problems Involving Subsection (b)(1) of the Freedom of Information Act (Part 4), 92d Congress, 2d sess., 1972, p. 1314. Hereafter referred to as House Hearings.

[5]. Ibid, p. 1017

[6]. S. Report No. 813, 89th Cong. 2d sess. 2418 (1966), quoted in Richard F. Johnson and Kay Mamorek, "Access to Government Information and the Classification Process - Is there a Right to Know?" N.Y. Law Forum, 1971, vol. 17, p. 820

[7]. House Hearings, Part 4, p. 1018

[8]. Ibid, Part 7, p. 2284

[9]. Ibid, p. 2283

[10]. Ibid, p. 2532

[11]. Arthur Schlesinger, Jr., "The Secrecy Dilemma," New York Times Magazine, June 2, 1972, p. 12

[12]. James McCartney, "What Should be Secret?" Columbia Journalism Review, vol. 10, no. 3, Sept. - Oct. 1971, p. 41

[13]. U.S. Congress. Senate. Hearings before a Subcommittee of Separation of Powers of th Committee on the Judiciary. Executive Privilege: The Withholding of Information by the Executive, 92d Cong., 1st sess., 1971, p. 17. Hereafter referred to as Senate Hearings.

[14]. House Hearings, Part 7, p. 2285. Four months later, Moorhead had slightly revised his findings, telling the House that two such cases had been discovered. Congressional Record, September 11, 1972, E 7808

15. U.S. Congress. House. Twenty First Report by the Committee on Government Operations, Union Calendar No. 738, House Report 92-1419 92d Cong. 2d sess., p. 8. Hereafter referred to as Report

16. House Hearings, Part 4, p. 1065

17. Johnston and Mamorek, op. cit., p. 822

18. Louis M. Kohlmeier, "The Journalist's Viewpoint," Administrative Law Review, vol. 23, no. 2, March 1971, p. 144

19. House Hearings, Part 4, p. 1278

20. Ibid, p. 1325. Robert O. Blanchard, writing in The Quill, vol. 60, no. 8, August 1972, p. 16, perhaps added credence to the claim. "The traditional press anti-secrecy spokesmen--the freedom of information committees of Sigma Delta Chi, the American Society of Newspaper Editors, the Associated Press Managing Editors, the American Newspaper Publishers Association, the Radio-Television News Directors Association--have had little to offer the (House) Subcommittee in either facts or specific amendments. This is not surprising, since they have had little experience with the Act."

21. Ibid

22. Ibid, p. 1288

23. Ibid, p. 1305 et. seq.

24. Ibid, p. 1321

25. Senate Hearings, pp. 484-5

26. House Hearings, Part 7, p. 2552

27. Ibid, Part 4, p. 1174

28. Federal Register, vol. 37, no. 48, March 10, 1972, p. 5212. The change from the "national defense" and "foreign relations" restrictions of 18 years before to the new designation of "national security" implies a broader basis for classification--a point not lost on Moorhead and other observers.

29. Ibid, p. 5214

30. Ibid, p. 5215

31. Ibid, p. 5217

32. Ibid

33. Ibid, p. 5215 On May 17, 1972, Nixon named Ambassador John Eisenhower as Chairman. (Dept. of State Bulletin, vol. 5, no. 1720, June 12, 1972, p. 822.) David R. Young of the National Security Council was named as executive director and said upon his appointment that he would continue to serve, as well, in his post as an assistant to Henry Kissinger. (House Hearings, Part 7, p. 2684)

34. House Hearings, Part 7, p. 2535

35. Ibid, p. 2537

36. Congressional Record, March 21, 1972, E 2774

37. House Hearings, Part 7, p. 2285

38. Congressional Record, May 3, 1972, H 4096

39. Congressional Record, September 11, 1972, E 7808

40. Congressional Record, May 24, 1972, H 5003

41. William G. Phillips, personal correspondence, March 23, 1973

42. U.S. Congress. House, A Bill to Amend Section 552 of Title 5 of the United States Code, H.R. 15172, 92d Cong., 2d sess., 1972

43. U.S. Congress. House, A Bill to Amend Section 552 of Title 5 of the United States Code, H.R. 17142, 92d Cong., 2d sess., 1972

44. Report, p. 8

45. House Hearings, Part 4, p. 1027-28

46. William G. Phillips, personal correspondence, December 4, 1972

47. Felix Belair, Jr., "Nixon Order Fails to Ease Access to Classified Data," New York Times, November 22, 1972, p. 40-C

48. Ibid

[49]American Society of Newspaper Editors, Problems of Journalism: Proceedings of the 1972 Convention, Washington, 1972, p. 61

[50]Ibid, p. 62

[51]Jean Stevens, "Classification: Threat to Democracy," Freedom of Information Center Report No. 270, University of Missouri, Oct. 1971, p. 4

[52]McCartney, op. cit. p. 44

[53]Ibid

[54]Anonymous, "Secrecy vs Information," The Nation, vol. 214, no. 26, June 26, 1972, p. 806

[55]Francis E. Rourke, "The Convenience of Secrecy," The Nation, vol. 215, no. 2, July 24, 1972, p. 41

[56]McCartney, op. cit., p. 44

BIBLIOGRAPHY

Books

Aronson, James. The Press and the Cold War (Indianapolis-New York; The Bobbs-Merrill Co., Inc. 1970)

Aronson, James. "The Media and the Message," in The Senator Gravel Edition - The Pentagon Papers, ed. by Noam Chomsky and Howard Zinn (Boston: The Beacon Press, 1972) p. 41-59

American Society of Newspaper Editors, Problems of Journalism: Proceedings of the 1972 Convention (Washington, 1972)

Rivers, William L. and Schramm, Wilbur, Responsibility in Mass Communication (New York, Evanston and London: Harper and Row, Publishers, 1969)

Government Publications

U.S. Congress. House, Administration of the Freedom of Information Act, Twenty first Report by the Committee on Government Operations, Union Calendar No. 738, House Report No. 92-1419, 92d Cong. 2d sess. 1972.

U.S. Congress. House, Hearings Before a Subcommittee of the Committee of the Committee on Government Operations, U.S. Government Information Policies and Practices - Administration and Operation of The Freedom of Information Act, Parts 4, 5, 6 and 7, 92d Cong. 2d sess., 1972.

U.S. Congress. House. Hearings Before a Subcommittee of the Committee on Government Operations, U.S. Government Information Policies and Practices - The Pentagon Papers Part 1, 92d Cong. 2d sess. 1971

U.S. Congress. Senate, Hearing Before the Subcommittee on Separation of Powers of the Committee on the Judiciary, Executive Privilege: The Withholding of Information by the Executive, 92d Cong. 1st sess. 1971

Journals

Johnston, Richard F. and Mamorek, Kay, "Access to Government Information and the Classification Process - Is There a Right to Know?" New York Law Forum, 17:814-840, 1971

Kohlmeier, Louis M., "The Journalist's Viewpoint," Administrative Law Review, vol. 23, no. 2, March 1971, pp. 143-45

Kutner, Luis, "Freedom of Information: Due Process of the Right to Know," The Catholic Lawyer, vol. 18, no. 1, Winter 1972, pp. 50-66

Magazines

Blanchard, Robert O., "Remember the Freedom of Information Act? It's Practically in Mothballs Today," The Quill, vol. 60, no. 8, Aug. 1972, pp. 16-18

Bonafede, Dom, "White House Works to Overcome Obstacles in Ending Secrecy of Some Documents," National Journal, April 15, 1972, p. 657

Buckley, William F. Jr., "The Theory of Jack Anderson," National Review, vol. 24, no. 18, May 12, 1972, p. 545

Goralski, "How Much Secrecy Can a Democracy Stand?" Lithopinion, vol. 7 no. 3, issue 27, 1972, pp. 78-81

Horton, Frank, "The Public's Right to Know," Case & Comment, vol. 77, no. 1, January-February 1972, p. 3

McCartney, James, "What Should Be Secret?" Columbia Journalism Review, vol. 10, no. 3, Sept.-Oct. 1971, p. 40

Rogge, O. John, "The Right to Know," American Scholar, vol. 41, no. 4, Autumn 1972, p. 643

Rourke, Francis E., "The Convenience of Secrecy," The Nation, vol. 215, no. 2, July 24, 1972, p. 41

"Conscience of the Bureaucrat," The Nation, vol. 214, no. 16, April 17, 1972, p. 485

"The Freedom of Information Act " Writer's Digest, vol. 52, no. 7, July 1972, p. 6

"Secrecy vs. Information," The Nation, vol. 214, no. 26, June 26, 1972, p. 805

"Secret Document," The New Republic, vol. 166, no. 16, p. 8

"What You Don't Know," The New Republic, vol. 167, no. 4, July 22, 1972, p. 8

Newspapers

Belair, Felix Jr., "Nixon Order Fails to Ease Access to Classified Data," New York Times, Nov. 22, 1972, p. 40-C

Carlson, Elliot, "Now It Can Be Told," Wall Street Journal (N.Y. ed.), September 6, 1972, p. 1

Carper, Elsie, "Report Shows 63% Decrease In Those Allowed to Classify," Washington Post, August 4, 1972, p. A-15

Schlesinger, Arthur Jr., "The Secrecy Dilemma," New York Times Magazine, Feb. 6, 1972, p. 12

Smith, Richard K., "A Tale of Secrecy," Washington Post, June 26, 1972, p. E-6

Public Documents

U.S. Congress. House. A Bill to Amend Sect. 552 of Title 5 of the United States Code, H.R. 15172, 92d Cong. 2d sess., 1972

U.S. Congress. House. A Bill to Amend Sect. 552 of Title 5 of the United States Code, H.R. 17142, 92d Cong. 2d sess., 1972

U.S. Congress. Senate. A Bill to Establish a Commission to Study All Laws, and Executive Branch Rules, Regulations, Orders and Procedures Relating to Classification and Protection of Information, S 3787, 92d Cong. 2d sess. 1972

Executive Order 11652, Federal Register, vol. 37, no. 48, March 10, 1972, p. 5209 et. seq.

Freedom of Information Bill, U.S. Statutes at Large, vol. 81, pt. 1 (1967) Public Law 90-23, June 5, 1967

Blair, William D. Jr., Deputy Assistant Secretary of State for Public Affairs, Testimony before a Special Subcommittee on Intelligence of the House Committee on Armed Services, March 10, 1972, in Department of State Bulletin, vol. 66, no. 1710, April 3, 1972, p. 523

Moorhead, William S., Remarks on U.S. Assistance Program in Cambodia, Congressional Record, March 16, 1972, E 2148

Moorhead, William S., Section by Section Comparison and Analysis of Executive Orders 10501 and 11652, "Classification and Declassification of National Security Information and Material, Congressional Record, March 21, 1972, E 2774

Moorhead, William S., Remarks on Special Analysis of Operations of the Freedom of Information Act, Congressional Record, March 23, 1972, E 2866

Moorhead, William S., Remarks on New Security Classification Executive Order, Congressional Record, March 27, 1972, E 3084

Moorhead, William S., Urges Postponement of Effective Date of Executive Order 11652, Congressional Record, May 3, 1972, H 4096

Moorhead, William S., Remarks on Newsmen's Dilemma, Congressional Record, May 4, 1972, E 4732

Moorhead, William S., Remarks on Statutory Security Classification System, Congressional Record, May 4, 1972, E 4706

Senate Resolution 299, Congressional Record, May 5, 1972, S 7317

Moorhead, William S., Introduces Bill to Create Statutory Security Classification System and to Provide for Access by Congress to Information from the Executive, Congressional Record, May 24, 1972, H 5002

Moorhead, William S., Comments During Debate on the Treasury, Postal Service, and General Government Appropriations 1973 Bill, Congressional Record, June 20, 1972, H 5813

Moorhead, William S., Freedom of Information Act marks fifth anniversary, Congressional Record, June 30, 1972, H 6487

Moorhead, William S., Calls "Truth in Government" overriding 1972 Campaign Issue, Congressional Record, August 14, 1972, H 7610

Moorhead, William S., Remarks on "The Unenforced Secrecy System," Congressional Record, September 11, 1972, E 7808

Moorhead, William S., Remarks in Introducing H.R. 17142, Congressional Record, October 16, 1972, E 8792

Nixon, Richard M., Statement of May 17, 1972. Department of State Bulletin, vol. 66, no. 1720, June 12, 1972, p. 822

Text of S. Res. 299, Congressional Record, August 15, 1972, S 13592

Submission of S. Res. 299, Congressional Record, May 5, 1972, S 7317

Study Related to Secret and Confidential Government Documents, Congressional Record, June 22, 1972, S 9988-95

Miscellaneous

Stevens, Jean, "Classification: Threat to Democracy," FOI Report No. 270, School of Journalism, University of Missouri at Columbia, Oct. 1971

Phillips, William, Letters to writer, Dec. 4, 1972; March 23, 1973