

4 May 1, 1947.

4 MEMORANDUM FOR THE ATTORNEY GENERAL

4 Re: Right of access of Federal Bureau of Investigation to confidential records of other Government agencies (particularly Census and Social Security).

4 Through the Assistant to the Attorney General

At your request, I have examined the Census Act to determine whether the Federal Bureau of Investigation may have access to confidential Census records. I find myself in agreement with the Department of Commerce that the Director of the Census is forbidden by existing law to give such information to the Federal Bureau of Investigation (13 U.S.C. 211, 218).

If the Federal Bureau of Investigation is to have access to confidential Census records, legislation must be obtained. During the war, Congress gave such authority under Title XIV of the Second War Powers Act (50 U.S.C. App. 644a), which expired on March 31, 1947. The President, in a recent message to Congress, stated incidentally that further extension of Title XIV "is not necessary." (Cong. Rec., Feb. 3, 1947, p. 794).

A similar problem arises with respect to records of the Social Security Administration. Those records were not covered by Title XIV of the Second War Powers Act. The text of the proposed letter to the Director of the Bureau of the Budget in regard to the proposed bill "To provide access to official information in criminal investigations" indicates the difficulties the Federal Bureau of Investigation has had in attempting to get information from Social Security records.

If the Department were to propose a general statute authorizing the Federal Bureau of Investigation to have access to all Government records, there would no doubt be considerable opposition on the part of the agencies. Not only do they dislike to make their files available for investigative purposes, but they may well claim that the amount of information furnished them by the public would be substantially cut down if it were realized that such information might find its way to the Federal Bureau of Investigation.

As to the constitutional aspects: I have no doubt that legislation of this character relative to access to future-acquired ma-

terial would be constitutional even in peace time. With regard to information obtained in the past in reliance on some earlier provision of law designed to protect its confidential character, a constitutional question might be raised. I shall be glad to study this further, if so requested.

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George T. Washington,  
Assistant Solicitor General.