have gone by since that historic event in human affairs which began a new era for all mankind, but most especially for us who live in the Western Hemisphere.

In the course of history, mankind has come to recognize Columbus as a great navigator, explorer, and dreamer, but also as a dedicated and religious man who by his exploits inspired countless generations to great deeds. I believe that much of our heritage of freedom and justice is due in large measure to the courage, the determination, and the ideals of Columbus.

It is to be regretted that to this day we have not yet given to Christopher Columbus the full recognition to which he is entitled. Both in the last Congress and also in the present Congress I have introduced bills to designate October 12 each year as Christopher Columbus Day and that it be known as Columbus Day in recognition of the achievements of the great navigator. I also suggested that this day be observed as a day of rededication to the ideals of peace, justice and democracy which have helped make America the great Nation that it is today.

The Senate proceeded to consider the bill (S. 1160) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes which had been reported from the Committee on the Judiciary with amendments on page 3, line 8, after the letter "(C) ", to insert "administrative"; on page 4, line 4, after the word "Records.", to strike out "Every" and insert "Except with respect to the records made available pursuant to subsections (a) and (b), every"; in line 6, after the word "shall", to insert "upon request for identifiable records made"; in line 8, after the word "place", to insert "fees to the extent authorized by statute"; in line 9, after the word "make", to strike out "all Its" and insert "such"; in line 14, after the word "records", to strike out "and information"; in line 15, after the word "records", to strike out "or information"; in line 17, after the word "party", to strike out "and"; in line 24, after the word "institutions.", to insert a semicolon and "and (9) geological and geophysical information and data (including maps) concerning wells"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of measures on the calendar, beginning with Calendar No. 798.

The VICE PRESIDENT. Without objection, it is so ordered.

CLARIFYING AND PROTECTING THE RIGHT OF THE PUBLIC TO INFORMATION

The Senate proceeded to consider the bill (S. 1160) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes which had been reported from the Committee on the Judiciary with amendments on page 3, line 8, after the letter "(C) ", to insert "administrative"; on page 4, line 4, after the word "Records.", to strike out "Every" and insert "Except with respect to the records made available pursuant to subsections (a) and (b), every"; in line 6, after the word "shall", to insert "upon request for identifiable records made"; in line 8, after the word "make", to strike out "all Its" and insert "such"; in line 14, after the word "records", to strike out "and information"; in line 15, after the word "records", to strike out "or information"; in line 17, after the word "party", to strike out "and"; in line 24, after the word "institutions.", to insert a semicolon and "and (9) geological and geophysical information and data (including maps) concerning wells"; so as to make the bill read:

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Congressional Record - Senate

October 13, 1965

Sec. 3, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

"SEC. 3. Every agency shall make available to the public the following information:

(a) AGENCY RECORDS.—Every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of the organization of the agency and the established places at which, the officers from whom, and the methods whereby, the public may make requests, or obtain decisions; (B) statements of the general course and method by which its functions are channelled and determined, including the requirement of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) every amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the particular record, there shall be no requirement in any manner be required to resort to, or be adversely affected by any matter required to be published in the Federal Register or so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed to be published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) Exemptions and Omissions.—Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including dissenting opinions) and all orders made in the adjudication of cases, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may make identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or rule of agency practice. Provided, That in every case the justification for the deletion must be fully explained in writing on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

(2) LIMITATION OF EXEMPTIONS.—Nothing in this section shall be interpreted to require that records of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

(3) PRIVACY.—As used in this section, "privacy" means any party other than an agency.

(4) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.

The amendments were agreed to.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 813), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

PURPOSE OF THE BILL

In introductory S. 1609, the predecessor of the present bill, Senator Long quoted the words of Madison, who was chairman of the committee which drafted the first amendments to the bill:

"Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prolog to a farce or a tragedy or perhaps both."

Today the very vastness of our Government and the multitude of its departments, the thousands of federal courts, the hundreds of departments, branches, and agencies which are not directly responsible to the people, that one begins to understand the monumental importance of having an Information policy of full disclosure.

Although the theory of an informed electorate is, as Senator Long quotes, "the guiding principle of democracy, there is nowhere in our present law a statute which affirmatively provides for that information. Many witnesses have testified that the present public Information section of the Administrative Procedure Act has been used more as an excuse for withholding than as a disclosure statute.

Section 3 of the Administrative Procedure Act, that section which this bill would amend, is full of loopholes which allow agencies to deny legitimate information to the public. Innumerable times it appears that information is withheld only to cover up embarrassing mistakes and irregularities or to protect the withholding justified by such phrases as "important national interest," or "required for good cause to be held confidential."

It is the purpose of the present bill to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly defined circumstances, to provide a general scheme of sanctions for court procedure by which citizens and the press may obtain information wrongfully withheld. It is important and necessary that the present void be filled.

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HISTORY OF LEGISLATION

After it became apparent that section 3 of the Administrative Procedure Act was being used more as an excuse for secrecy, proposals for change began.

The first of these proposals, S. 2504, 84th Congress, introduced by Senator Wiley, and the McCarthy Amendment, introduced by Senator Ervin and Butler, which was incorporated as a part of the proposed Crafts of the Federal Administrative Procedure Act.

S. 4094 was reintroduced by Senator Hruska of Nebraska.

This is not an easy task to balance the opposing interests, but it is not an impossible task. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or so substantially subordinated that it is only when one further considers the present void be filled.

Today the very vastness of our Government, the thousands of federal courts, the hundreds of departments, branches, and agencies which are not directly responsible to the people, is nowhere in our present law a statute which affirmatively provides for that information. Many witnesses have testified that the present public Information section of the Administrative Procedure Act has been used more as an excuse for withholding than as a disclosure statute.

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More recently, Senator Carroll introduced S. 1567, co-sponsored by Senators Hart, Long, and Proxmire. Also introduced in the 87th Congress was S. 1666, a companion bill in the House, H.R. 6926, S. 1907 by Senator Proxmire, and S. 3410 introduced by Senator Hart. Although hearings were held on the Hennings bills, and considerable interest was aroused by all of the bills, no legislation resulted.

In the last Congress, the Senate passed S. 1666, upon which this bill is based, on July 31, 1964. A Startling development came in that Congress for its full consideration by the House. The present bill is substantially S. 1666, as passed by the Senate, with amendments suggested by the committee in the course of the hearings.

INADEQUACY OF PRESENT LAW

The present section 3 of the Administrative Procedure Act, which would be replaced by S. 1160, is so brief that it can be profitably placed at this point in the report:

"PUBLIC INFORMATION"

"Section 3: Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency, every agency shall separately and currently publish in the Federal Register (1) descriptions of its central and field organizations and the functions they perform; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; (3) statements of policy and interpretations formulated and adopted by the agency for the guidance of the public; but not rules addressed to and outside these limited functions are channeled and determined, in- cluding the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; (4) final opinions or orders in the adjudicative proceedings of the agency to make available to public inspection; but not rules addressed to and outside these limited functions are channeled and determined.

3. (a) Rules: Every agency shall separately and currently publish in the Federal Register: (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency.

3. (b) Public records: Save as otherwise provided by law, the public shall have a right to know what its Government is doing. There is, of course, a certain need for confidentiality in some aspects of Government operations and these are protected specifically; but outside these limited areas, all citizens have a right to know what their Government is doing.

The serious deficiencies in this present statute are obvious. They fall into four categories:

1. There is excepted from the operation of the whole section "any function of the United States requiring secrecy in the public interest."

2. Although subsection (b) requires the agency to publish "full final opinions or orders in the adjudicative proceedings of the agency," it vests this command by adding the qualification "except those required for good cause to be held confidential."

3. As to public records generally, subsection (c) is limited to "public records "to persons properly and directly concerned except information held confidential for good cause.

"(c) Public records: save as otherwise provided by law, the public may not be relied upon or cited as precedent by any agency.

What S. 1160 Would Do

S. 1160 would emphasize that section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute by the following major changes:

1. It sets up workable standards for what records should be made available for public inspection. In particular, it avoids the use of such vague phrases as "good cause," "not in the public interest," and limited types of information that may be withheld.

2. It eliminates the test of who shall have the right to obtain information. For the great majority of different records, the public as a whole has a right to know what its Government is doing and to decide for itself whether it has a right to have full information to enable it to deal effectively and knowledgeably with the Federal Register.

3. The revised section 3 gives to any aggrieved citizen a remedy in court.

DETAILED DESCRIPTION OF BILL

Subsection (a) (Subsection (a) of S. 1160 (as subsec. (b) of sec. 3 of the Administrative Procedure Act) deals with agency opinions, orders, and final orders, and rules. This Administrative Procedure Act subsection is replaced by a detailed subsection, specifying what orders, opinions, and rules must be made available. The exceptions have again been moved to a single subsection (e), dealing with exceptions.

Subsection (b) of S. 1160 (as subsec. (b) of sec. 3 of the Administrative Procedure Act) is made a separate subsection (b) to delete identifying details after written justification is necessary in order to be able to balance the public's right to know against the private citizen's right to be secure in his personal affairs which have no bearing or effect on the public general. For example, it may be pertinent to know that unnecessary and unseasonable publicity is being made in connection with public relief costs; but it is not necessary that the identity of any person so affected be made public.

JUSTIFICATION FOR DELETION OF IDENTIFYING DETAILS IS TO BE PLACED AS PREAMBLE TO THE OPINION, STATEMENT OF POLICY, INTERPRETATION, INSTRUCTION, STAFF MANUAL, OR NOTICE TO STAFF THAT AFFECT ANY MEMBER OF THE PUBLIC.

There is a provision for the deletion of certain details in opinions, statements of policy, interpretations, instructions to staff that affect any member of the public.

Many agencies already have indexing programs, e.g., the Interstate Commerce Commission. The present section 3 of the Administrative Procedure Act) is made a separate subsection (b) to delete identifying details after written justification is necessary in order to be able to balance the public's right to know against the private citizen's right to be secure in his personal affairs which have no bearing or effect on the public general. For example, it may be pertinent to know that unnecessary and unseasonable publicity is being made in connection with public relief costs; but it is not necessary that the identity of any person so affected be made public.

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Subsection (b) of S. 1160 (as subsec. (b) of sec. 3 of the Administrative Procedure Act) was stricken because it was intended to replace the existing law. A draft of the present section 3 of the Administrative Procedure Act)

The serious deficiencies in this present statute are obvious. They fall into four categories:

1. There is excepted from the operation of the whole section "any function of the United States requiring secrecy in the public interest."

2. Although subsection (b) requires the agency to publish "full final opinions or orders in the adjudicative proceedings of the agency," it vests this command by adding the qualification "except those required for good cause to be held confidential."

3. As to public records generally, subsection (c) is limited to "public records "to persons properly and directly concerned except information held confidential for good cause.

4. There is no remedy in case of wrongful withholding of information from citizens by Government officials.

PRESENT SECTION 3 OF ADMINISTRATIVE PROCEDURE ACT IS NOT DISCLOSURE STATUTE

It is the conclusion of the committee that the present section 3 of the Administrative Procedure Act is of little or no value to the public in gaining access to records of the Federal Register. Indeed, it has precisely the opposite effect; it is cited as statutory authority for the withholding of virtually any piece of information the official or an agency does not wish to disclose.

Under the present section 3, any Government official can under color of law withhold all final opinions or orders in the adjudicative proceedings of the agency to make available to public inspection.

An exception has been moved to a single subsection (e) dealing with exceptions.

Apart from the exceptions, agencies must make available for public inspection and copying any final orders or opinions and final regulations and statements of policy and interpretations which have been adopted by the agency and are not required to be published in the Federal Register and administrative staff manuals and instructions to staff that affect any member of the public.

WHAT S. 1160 WOULD DO

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There are also a number of technical changes in section 3(b):

The phrase "* * * and copying * * *" was added because it is frequently of little use to restrict orders or files to the agency unless one is able to copy them for future reference. Hence the right to copy these matters is supplemental to the right to inspect, as in the previous section, and is not by itself meaningful.

The addition of "* * * concurring and dissenting opinions * * *" added to the list of matters which the agency is authorized to withhold by the "unless" clause was added to provide the agencies with an alternative means of keeping these materials available through publication.

Description of subsection (c)

Subsection (c) deals with "agency records" and would have almost the reverse, or more accurately, the same result as the corresponding provision of the Freedom of Information Act. The process of making the information available through publication or otherwise unless secret by one of the exceptions in subsection (e). Further, it is made clear that, because this section only applies to the part of the bill right to know, it cannot, therefore, be backhandedly construed as authorizing the withholding of information from the Congress, the collective representative of the people, in any way.

Descriptin of subsection (d)

This subsection provides that a record be kept of all final votes by agency members in every agency proceeding and that this record of votes be available to the public.

Agency practice in this area varies. This change is meritorious in itself. It will afford agency members a uniform practice and provides the public with a very important aid in the agency's decisional process.

Description of subsection (e)

Subsection (e) deals with the categories of matters which are exempt from disclosure under the Act. It is a measure of the public's right to know the operations of its Government. Rather than to be a protection against the abuse of power and the advancement of wide-spread public dissatisfaction and confusion. Retention of such an exception in section (e) is consistent with the general objective of enabling the public readily to gain access to the information necessary to deal effectively and upon equal footing with the agency.

Exemption No. 2 relates only to the internal personnel rules and practices of an agency or to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like.

Exemption No. 3 deals with matters specifically exempt from disclosure by another statute.

Exemption No. 4 is for "trade secrets and commercial or financial information obtained from any person and privileged or confidential." This exception is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, and which would not be released to the public if not made available to it by the person from whom it was obtained. This would include business sales, account records, customer lists, and manufacturing processes. It would also include information customarily subject to the patient-doctor, lawyer-client, lender-borrower, and similar confidentiality voluntarily. It would include any commercial, technical, and financial data, submitted by an applicant to a lending agency in connection with any loan application or loan.

Exemption No. 5 relates to "inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency." It will make it impossible for any agency to establish a "closed shop." The committee is convinced of the merits of this general proposition, but it has attempted to delimit the exception as narrowly as consistent with efficient Government operation.

The committee has also provided an exception for "personnel and medical files, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Such agencies as the Veterans' Administration, Department of Health, Education, and Welfare, Selective Service, etc., have great quantities of files, the confidentiality of which has been maintained by agency rule but without statutory authority. There is a concern that these files should not be opened to the public, and the committee decided upon a general exemption rather than a number of specific statutory authorizations for various agencies. It is believed that the scope of the exemption is held within bounds by the use of the limitation of "a clearly unwarranted invasion of personal privacy."

The phrase "clearly unwarranted invasion of personal privacy" eunuchates a policy that is designed to strike a balance between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to govern. The committee believes that this policy should lend itself particularly to those Government agencies where persons have a reasonable expectation of personal privacy when releasing personal data usually for limited purposes. For example, health, welfare, and selective service records are highly personal to the person involved, yet facts concerning the award of a pension or benefit should be disclosed to the public.

Exemption No. 7 deals with "investigatory files compiled for law enforcement purposes." These are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are already available to the public, could harm the Government's case in court.

Exemption No. 8 is directed specifically to insuring the security of our financial institutions by making available only to the Government agencies responsible for the regulation of institutions or supervising the examination, or operating condition reports prepared by, on behalf of, or for the use of such agencies.

Description of subsection (f)

The purpose of this subsection is to make it clear beyond doubt that all materials of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exemptions in subsection (e). Further, it is made clear that, because this section only applies to the part of the bill right to know, it cannot, therefore, be backhandedly construed as authorizing the withholding of information from the Congress, the collective representative of the people, in any way.

Description of subsection (g)

This subsection provides a definition of the term "private party" which is not presently defined in the Act being amended by this bill.

Description of subsection (h)

The 1-year period before this act goes into effect is to allow ample time for the agencies to conform their practices to the requirements of this act.

CONCLUSION

The committee feels that this bill, as amended, would establish a much-needed policy of disclosure, very much in the necessary interest of confidentiality.

It is evident that secrecy benefits no one. It injures the people it seeks to serve; it injures its own integrity and operation. It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty.

For these reasons, the committee reports the bill with the recommendation that it be adopted, as amended.

COPYRIGHT OFFICE FEES

The bill (H.R. 2682) to amend title 17, United States Code, so as to increase the fees payable to the Copyright Office, as to which the fees were charged was considered, ordered to a third reading, read the third time, and passed.

Mr. MANFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 814), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

PURPOSE OF THE BILL

The purpose of H.R. 2682 is to increase the fees payable to the Copyright Office, so as to bring the cash receipts of the Office nearer in line with its expenditures.

STATEMENT

The present statutory fees of the Copyright Office were established in 1948. As a result of the 1946 amendment of copyright fees, the Copyright Office Office has been able to keep pace with its expenditures. Since fiscal year 1950 the ratio of fees to expenditures has dropped from near 100 percent to 63 percent for fiscal year 1965. This decline has resulted in expressions of concern from the Appropriations Committees of both the Senate and the