

Guidelines Set on Open Files

Memo Is Circulated on Information Act

By STEPHEN M. AUG

WASHINGTON (AP) — The Justice Department made public its advice to federal agencies Saturday night how far the government should open its files and let the public see what is in them.

The department circulated a 47-page memorandum designed to set up guidelines on the new Freedom of Information Act that goes into effect July 4. The law was passed by Congress last year.

The intent is to permit any member of the public to see any document in government files — provided it's not covered by a list of nine categories of information exempted from disclosure.

NOT MANDATORY

But the Justice Department memo says even documents that are exempted from mandatory public disclosure still may be made public — and the exemptions are not mandatory.

"Agencies should also keep in mind that in some instances the public interest may best be served by disclosing, to the extent permitted by other laws, documents which they would be authorized to withhold under the exemptions," the memorandum says.

But even Atty. Gen. Ramsey Clark's foreword to the memo admits what other lawyers, in and out of government, have been saying for months: The law is confusing, open to several interpretations, and it may take a series of court cases to determine whether some government documents are to become public.

Some provisions of the new law, Clark says, "allow room for more than one interpretation, and definitive answers may have to await court rulings."

NO SPECIFIC LISTS

Nowhere in the document are

there specific listings of hitherto private documents that are to be made public, although Justice Department officials concede many agencies have asked for such a list.

The document says that the new law does not encourage "fishing expeditions" — opening of government files just to see what's in them. Anyone wishing a certain document will have to identify it as fully as possible.

These same officials acknowledge that even under these conditions there are thousands of hitherto secret documents that might become available. Some sources have indicated that letters from congressmen to government agencies urging favorable action for certain constituents could now be made public — provided they can be properly identified by the person wishing to see them.

BASIC MEANING

The basic tenor of the memorandum, though, is that wherever possible, government agencies should make documents public.

Rep. John E. Moss, D-Calif., chairman of the House Government Information subcommittee, said the department's guidelines "generally carry out the intent of Congress, both in spirit and content."

"While the guidelines are a good step forward, the real test of the effectiveness of the act will depend on the implementing regulations issued by the departments and agencies within the framework of the guidelines," Moss said in a statement.

"The subcommittee will monitor these regulations with care, and whenever they appear not to measure up to the spirit or the intent of the law, appropriate remedial steps will be taken including public hearings if that seems desirable."

SWITCH IN PHILOSOPHY

The public information law represents a switch in the basic philosophy of disclosure of government documents. Under the new law, the government must

make information public unless there's good reason to hold it back.

The law provides that any member of the public may take court action to force government officials to part with documents. The government will have the burden of proving that the information should not be made public.

Under present law, the attitude is the opposite. It is up to the applicant to show good reason why the information should be made public.

In his foreword, Clark said "if government is to be truly of, by and for the people, the people must know in detail the activities of government. Nothing so diminishes democracy as secrecy."

LIMITING ACCESS

Although Justice Department officials believe the new law will make many documents accessible for the first time, it could act in at least one area to limit access even further than at present.

This is in the last of the nine exemptions. It provides that the

government does not have to make public geological and geophysical data concerning oil and gas wells.

Under present regulations of the Bureau of Land Management, details of oil and gas findings on federal lands must be given to the U.S. Geological Survey. This information customarily is made public — but only after a sufficient delay to preclude speculation by competitors of the company that made the strike.

Current law says the government may withhold this information from the public only in cases in which the government's own interests may be prejudiced. But the new law places the entire area under an exemption — and so the government no longer has to make this information public.

A land management official

said, however, that the bureau still intends to release it.

Officials say that the section was inserted in the law at the insistence of lobbyists for oil and gas interests.

EXEMPTIONS

Generally the new law exempts such materials as tax reports, medical and personnel files and trade secrets.

Although the government must, according to the Justice Department guidelines, make public any administrative staff manuals and instructions to the staff that affect any member of the public, some of these are excluded from public view.

Exempt are those manuals which "contain confidential instructions to agency staff which must be protected from disclo-

sure if they are to serve the purpose for which they are intended."

Examples of such materials are:

—Instructions to contracting officers governing the limits of what they may concede on behalf of the government in negotiating contracts.

—Standards governing bank examinations.

—Internal Revenue Service instructions which advise employes how far they may bargain with taxpayers to make compromises in disputes over income taxes.

THREE-MAN TEAM

The memorandum is the product of six months of work—at least part time—by a three-man team headed by Frank Wozencraft, an assistant attor-

ney general in charge of the Office of Legal Counsel. He is the principal legal adviser to the attorney general who, in turn, is the lawyer for the President and his Cabinet.

Several lawyers who practice before government agencies, including Wozencraft, have said the law is confusing.

Wozencraft said at an American Bar Association institute that it is "an exceedingly important and difficult statute to

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construe." He predicted arguments, widely differing interpretations, and said "that's what happens when legislation that is not clear gets on the books."

NINE EXEMPTIONS

The nine specific exemptions to what must be made public concern:

Classified material on defense and foreign policy, documents related solely to the internal workings of an agency, matters

that are exempted specifically by other laws, information given the government in confidence, internal communications within an agency or among agencies, information that would invade an individual's privacy, investigatory information, material concerning financial institutions and information concerning oil and gas wells.

The Justice Department recommends that each agency set up a public reading room where

most documents would be available for perusal and copying. The reading room also should provide a ready reference to all rules and policy statements which have been published in the Federal Register.

The department believes important the new law's requirement that an agency may not use any manual or instruction as a precedent for decisions unless the document is made public.