

Justice Endorses FBI, CIA

By George Lardner Jr.
Washington Post Staff Writer

The Justice Department has endorsed an unprecedented exemption from the Freedom of Information Act that would empower both the CIA and the FBI to block court review of "certified" secrets.

The new proposal, which the CIA has agreed to support, would cover three broad categories of intelligence information that would be immune from disclosure.

Under present law, the federal courts have the authority to examine any government documents denied under the Freedom of Information Act to determine if they have been properly withheld.

Officials at Justice, however, said

the new bill would set up a certification procedure that would not permit any "second-guessing" by the judiciary.

Several sources said that, under the plan, it appears that even previously unclassified information could be held back. They said it could also be construed to block the disclosure of activities such as those undertaken years ago in the FBI's controversial COINTELPRO program to disrupt and discredit antiwar groups and other domestic targets.

The proposal, sources said, covers:

- Intelligence information obtained from sources other than employees of the U.S. government.
- Information identifying or "tending to identify" a source or potential

source of information or assistance to an intelligence agency.

- Information about scientific or technical systems for the collection of intelligence so long as these systems do not involve a risk to human life or health. Officials said this was designed to prevent the CIA, for example, from maintaining the secrecy of any drug-experimentation programs such as MK-ULTRA and others it has conducted in the past.

Justice Department sources described the plan as a much more limited inroad on the Freedom of Information Act than the sweeping exemption the CIA proposed earlier this year to put its operational and technical files virtually beyond the reach of the law. Information in the three cate-

Information Act Exemption

gories set down in the new proposal could still be sought in the courts by Americans requesting records about themselves.

"The whole intent is to preserve the principle of public oversight," one government lawyer said. The CIA, the FBI and other U.S. intelligence agencies would still have to inspect their files in response to freedom of information requests before certifying any documents or portions of documents as covered by the new exemption.

Once that is done, however, the certifications would be "conclusive and not subject to judicial review."

"The big change [from current law] is that the decisions [to withhold] will be made by the executive branch," another official said. "I don't think it

will cause any additional information to be withheld."

Congressional experts and defenders of the current Freedom of Information Act were skeptical.

"In some respects, it may be broader than the CIA's original proposal," said one congressional source. "It doesn't appear to be limited to classified information. They [the CIA] should be very happy if they get this."

Another freedom of information expert pointed out that the CIA has in the past attempted to withhold even newspaper articles, on the grounds that their disclosure would reveal a CIA source. In any case, he predicted that the proposed certification procedure would stir up strong opposition.

Government officials said no consid-

eration was given to prohibiting certification for information about illegal or improper activities. "That would be insulting [to the intelligence agencies]," one said. "The whole process assumes good faith in complying with the law. There are no guarantees against abuses of any law."

The new proposal is expected to be submitted to the House government information subcommittee and the Senate subcommittee on administrative practice and procedure, the two panels with jurisdiction over the Freedom of Information Act. It may also be assigned to the potentially more sympathetic House and Senate Intelligence committees, which are considering charter legislation for the U.S. intelligence community.