

FOREWORD

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. Self-government, the maximum participation of the citizenry in affairs of state, is meaningful only with an informed public. How can we govern ourselves if we know not how we govern? Never was it more important than in our times of mass society, when government affects each individual in so many ways, that the right of the people to know the actions of their government be secure.

Beginning July 4, a most appropriate day, every executive agency, by direction of the Congress, shall meet in spirit as well as practice the obligations of the Public Information Act of 1966. President Johnson has instructed every official of the executive branch to cooperate fully in achieving the public's right to know.

Public Law 89-487 is the product of prolonged deliberation. It reflects the balancing of competing principles within our democratic order. It is not a mere recodification of existing practices in records management and in providing individual access to Government documents. Nor is it a mere statement of objectives or an expression of intent.

Rather this statute imposes on the executive branch an affirmative obligation to adopt new standards and practices for publication and availability of information. It leaves no doubt that disclosure is a transcendent goal, yielding only to such compelling considerations as those provided for in the exemptions of the act.

This memorandum is intended to assist every agency to fulfill this obligation, and to develop common and constructive methods of implementation.

No review of an area as diverse and intricate as this one can anticipate all possible points of strain or difficulty. This is particularly true when vital and deeply held commitments in our democratic system, such as privacy and the right to know, inevitably impinge one against another. Law is not wholly self-explanatory or self-executing. Its efficacy is heavily dependent on the sound judgment and faithful execution of those who direct and administer our agencies of Government.

It is the President's conviction, shared by those who participated in its formulation and passage, that this act is not an unreasonable encumbrance. If intelligent and purposeful action is taken, it can serve the highest ideals of a free society as well as the goals of a well-administered government.

This law was initiated by Congress and signed by the President with several key concerns:

—that disclosure be the general rule, not the exception;

- that all individuals have equal rights of access;
- that the burden be on the Government to justify the withholding of a document, not on the person who requests it;
- that individuals improperly denied access to documents have a right to seek injunctive relief in the courts;
- that there be a change in Government policy and attitude.

It is important therefore that each agency of Government use this opportunity for critical self-analysis and close review. Indeed this law can have positive and beneficial influence on administration itself—in better records management; in seeking the adoption of better methods of search, retrieval, and copying; and in making sure that documentary classification is not stretched beyond the limits of demonstrable need.

At the same time, this law gives assurance to the individual citizen that his private rights will not be violated. The individual deals with the Government in a number of protected relationships which could be destroyed if the right to know were not modulated by principles of confidentiality and privacy. Such materials as tax reports, medical and personnel files, and trade secrets must remain outside the zone of accessibility.

This memorandum represents a conscientious effort to correlate the text of the act with its relevant legislative history. Some of the statutory provisions allow room for more than one interpretation, and definitive answers may have to await court rulings. However, the Department of Justice believes this memorandum provides a sound working basis for all agencies and is thoroughly consonant with the intent of Congress. Each agency, of course, must determine for itself the applicability of the general principles expressed in this memorandum to the particular records in its custody.

This law can demonstrate anew the ability of our branches of Government, working together, to vitalize the basic principles of our democracy. It is a balanced approach to one of those principles. As the President stressed in signing the law:

“* * * a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest * * *. I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.”

This memorandum is offered in the hope that it will assist the agencies in developing a uniform and constructive implementation of Public Law 89-487 in line with its spirit and purpose and the President's instructions.

RAMSEY CLARK,
Attorney General,
June 1967.