

AUG 13 1974

Data Bill Showdown Near

By Bob Kuttner

Washington Post Staff Writer

A House-Senate conference committee is scheduled to meet this afternoon to complete action on a freedom of information bill that President Nixon had been advised to veto.

President Ford's decision on whether to sign the measure, which is almost certain to win final passage, could provide an early test of the limits of his commitment to "openness and candor" in government.

The bill is intended to close loopholes in the 1966 Freedom of Information Act, and to make it harder for officials to deny government documents arbitrarily to the press and the public.

Sen. Roman Hruska (R-Neb.) had urged Mr. Nixon to veto the measure. The Justice Department has raised objections to several provisions, though a ranking official denied yesterday that the department wants the package of amendments has been gestating since 1972, when the House Foreign Operations and Government Information Subcommittee began oversight hearings on enforcement of the 1966 act.

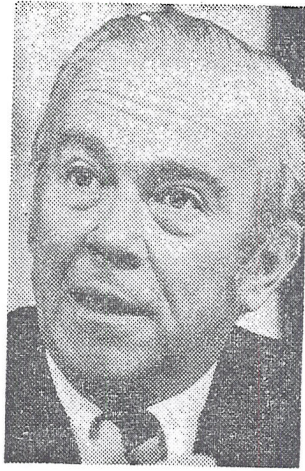
The hearings and a companion investigation by the Senate Administrative Practices Subcommittee revealed a formidable array of bureaucratic devices for evading the intent of the act. In a number of cases the government, in effect, simply denied the request for information, and invited the citizen to sue.

Malvin Schecter, an editor of Hospital Practice Magazine, took the Social Security Administration to court in order to pry loose some nursing home inspection reports. The government didn't appeal the decision, but when Schecter went back to request a second batch, he had to file suit all over again.

The Agriculture Department used the same ploy, unsuccessfully, to discourage attempts by a public interest group to obtain meat inspection records.

Sen. Birch Bayh (D-Ind.) sued the Federal Trade Commission to get a look at a transcript concerning the FTC's antitrust complaint against eight oil companies. He won, but when reporters asked for copies of the same transcript, the FTC ruled that they had to file their own Freedom of Information Act requests.

The problem, according to Sen. Edward M. Kennedy (D-Mass.) and Rep. William Moorhead (D-Pa.), sponsors of the amendments, is that under the existing law a bureaucrat can give the public an extended runaround and face no sanction even if the citizen has the stamina to file and win a suit.



SEN. EDWARD M. KENNEDY, REP. WILLIAM MOORHEAD
... sponsors of amendments to information bill

When citizens did sue to enforce their rights, the government lost more than half the cases.

The legislation would add incentives to make officials release the information without being taken to court.

Last week, the House and Senate conferees tentatively agreed on all but one provision of the bill. The measure would:

- Permit citizens who win freedom of information suits to recover attorneys' fees.
- Prohibit delays in responding to requests by setting a time limit of 10 working days.
- Shift the burden of proof to the government when it seeks to deny information in an "investigatory file."

- Require agencies to develop an index of publicly available information, and to set uniform and reasonable fees for document searches.

- Give courts the power to judge whether a secret document was properly classified in the first place, overruling the Supreme Court's decision in the unsuccessful suit by Rep. Patsy Mink (D-Hawaii) and others to obtain scientific reports from the Environmental Protection Agency on the possible hazards of the Amchitka nuclear test. The court ruled that the government's classification of a document is not subject to judicial review.

Still unresolved is a tough sanction provision added by the Senate, which would permit a judge to order penalties for an official who denied in-

formation "without reasonable basis in law." Officials could be suspended without pay for up to 60 days.

Kennedy, the main Senate sponsor of the amendment, contends that the sanction is necessary to "eliminate many of the cases where obstinate officials disregard the law in order to minimize embarrassment to the agency."

Many of the House conferees consider the provision unfair to the official, and bad law. They argue that the rest of the package provides ample incentives. A possible compromise suggested by Rep. Paul McCloskey (R-Calif.) would give the disciplinary powers to the agency rather than the courts.

Apart from the sanction provision, the measure is not controversial among congressmen. It passed both chambers earlier this year with overwhelming bipartisan backing and frequent references to the need for post-Watergate reform.

However, the Justice Department raised objections to the provisions permitting the courts to overrule security classifications of documents, the shortened time limits, and particularly to broadening access to information in law enforcement files, which was strenuously opposed by the FBI.

In keeping with the spirit of the legislation, the sessions of the House Senate conference are open to the public, still a relatively rare occurrence in Congress. President Ford has not announced a position on the bill.