Ruling on Information Act JUN 25 1975

Court Upholds Secrecy If Specific Law Allows It

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The Supreme Court ruled yesterday that the Freedom of Information Act permits federal officials to withhold confidential information if there is a law allowing nondisclosure "in the interest of the public."

By a 7-to-2 vote the court overturned a lower court ruling that the information law eliminated vague "public interest" exemptions from disclosure and that it demanded more concrete justification for refusal to divulge government secrets.

The decision, delivered by Chief Justice Warren E. Burger, gives government officials the right to cite numerous broadly worded laws—nearly 100 of them, according to congressional documents quoted by the court. The ruling allows officials varying degrees of discretion in maintaining secrecy.

Burger said Congress knew about those laws when it passed the information act in 1966 and amended it last year, but decided "to permit the numerous laws then extant allowing confidentiality to stand. It is not for us to override that legislative choice."

Two concurring justices, Potter Stewart and Thurgood Marshall, agreed with Burger that Congress did not repeal existing secrecy laws. "It is simply impossible fairly to discern any such intention on the part of Congress," they said.

Dissenting Justices William J. Brennan Jr. and William O. Douglas voted to sustain the U.S. Court of Appeals ruling that infomation-act exemptions should be rare and narrow.

Consumer lawyer Reuben B. Robertson III, whose battle for data withheld by the Federal Aviation Administration triggered the lawsuit, said yesterday that the decision leaves aviation agencies and other government officials with complete discretion to deter-

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mine the meaning of "public interest."

"They're better off now than the FBI and the CIA," said Alan B. Morrison, who acted as Roberston's attorney in the case. "The whole information act goes down the drain as regards the FAA and the CAB (Civil Aeronautics Board)."

The information law gives citizens the right to take government agencies to court in secrecy disputes, with the burden of proving the need for secrecy placed on the government. The law spells out nine exemptions, including investigatory files, certain interagency advisory memoranda and industrial trade secrets.

At issue were the information law's exception for records "specifically exempted from disclosure by statute" and an FAA law used by officials to reject Robertson's demand for data on airline safety.

The FAA law requires officials to withold data when "any person" objects to disclosure and when officials decide that disclosure would adversely affect the person who objects and "is not required in the interest of the public."

Robertson and Jerome B. Sirmandle, working with Ralph Nader's Center for the Study of Responsive Law, sought documents from the FAA's SWAP program—Systems Worthiness Analysis Program—consisting of safety and performance studies of commercial airlines.

The FAA said the reports could not be divulged because they were compiled with industry help on pledges of confidentiality designed to promote maximum cooperation in joint pursuit of greater air safety.

Experts on the information act were uncertain yesterday whether it would be feasible to seek revision of the exemption from Congress. Burger's opinion called such revision "a virtually impossible task" for Congrress.

Congress did tighten the law in 1974 after the high court, also with the reluctant concurrence of Justice Stewart, ruled that citizens had no right to have a court rule on the propriety of an official se-

calls on judges to examine questioned documents privately to determine whether they were properly classifed.