

# Knowing And Knowing

By Theodore J. Jacobs

WASHINGTON—With an estimated six billion files, the Federal Government is the largest single creator and collector of information in the world.

These include the widely known Federal Bureau of Investigation and Central Intelligence Agency files as well as a vast storehouse of information on almost every type of product and service the Government purchases, safety reports on products the Government regulates, and compliance reports on the laws administered. Also included is the written record of official communication and action, the bureaucracy's constant effort to analyze, justify, and interpret its policy.

Does the public have a right to know what the Government knows? Does it have the right to the data upon which official decision-making is based? The law—the Freedom of Information Act—says yes. That law was first enacted in 1966 and recently strengthened over President Ford's veto.

It declares that all Government documents, with certain specific exceptions, must be made available to the public. The 1974 amendments, which took effect Feb. 19, were designed to clarify the all-important exceptions and to deal with the bureaucratic delays and abuses that had made the act more loophole than law.

Responding to a request under the act, the State Department formally made public on Thursday transcripts of background briefings that Secretary of State Kissinger had given reporters.

When the act was passed, it was hoped that it would be used primarily by journalists to obtain information from what seemed to be a congenitally secretive Government. But the demands of daily deadlines and the costs of extended litigation soon made it clear that the press could often be diverted by a determined bureaucracy.

It took an eighteen-month court battle before the F.B.I. disclosed documents of its surveillance and counter-intelligence program.

When finally released in the post-Watergate fallout, they exposed a pattern of activities against domestic dissident groups, including such "new left" and "black militant" groups as the organization then headed by the Rev. Dr. Martin Luther King Jr.

It was also expected that the original act would be used by citizen and consumer groups to tap the rich lode of safety and products-test information accumulated by Federal agencies. In

case after case, bureaucratic self-interest impeded public access to the data.

But perhaps the most compelling failure of the previous act was the Supreme Court's interpretation in a case brought by Congresswoman Patsy Mink to obtain a report on underground nuclear testing. The report had been refused on the grounds of national security, and the United States Supreme Court held, in effect, that if an agency marks a document "secret" then the court may not determine if it was properly classified, but must abide by the agency's ruling.

Since most Government offices having even a remote connection with national security routinely mark everything in sight as classified, the obvious purpose of the law was thwarted. This is now remedied by the 1974 amendments, which make it clear that the courts have a duty to determine whether a claim of national security is justified and may review the information itself to see if it is properly classified.

Another major problem with the old Freedom of Information Act, remedied by the 1974 amendments, was the over-reliance on the exemption for "investigative files compiled for law enforcement purposes."

The clear intent of this exemption was to protect the kind of investigative material that would expose police sources or violate civil liberties.

In practice, however, whole blocks of files often dealing with closed cases decades old were declared to be investigatory and thus immune from public scrutiny.

Under this exemption, the report on the cover-up of the My Lai incident and the bullet that allegedly killed President Kennedy were held to be exempt although no prosecutions were then pending.

Now, under the new amendments, law enforcement files such as those kept by the F.B.I. would have to be furnished on request unless disclosure would interfere with a pending proceeding, violate an individual's privacy, or compromise a confidential source or investigatory technique.

Agencies are now required to publish indexes of materials to help the public know what the files may contain, they must process requests for information within ten working days, and they may charge only the direct costs of search and duplication.

Finally, agency personnel may be disciplined for arbitrary or capricious conduct, and the Government may be required to pay attorneys' fees and other litigation costs in cases in which the complainant prevails.

No wonder that virtually every agency recommended a veto, and that President Ford did veto the bill only months after promising an open Administration in his first public statement as President.

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