

DOJ Review Completed.

EXECUTIVE SECRETARIAT
Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
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8	DDS&T				
9	Chm/NIC				
10	GC		✓		
11	IG				
12	Compt				
13	D/EEO				
14	D/Pers				
15	D/OEA				
16	PAD/OEA				
17	SA/IA				
18	AO/DCI				
19	C/IPD/OIS				
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SUSPENSE		Date			

Remarks:

Executive Secretary
 6/3/83
 Date

3-27 (F10-31)

STAT

THE WHITE HOUSE
WASHINGTON

Executive Registry
83-2858

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 6/2/83 NUMBER: 118689CA DUE BY: _____

SUBJECT: Administration amendments to the Freedom of Information Act

	ACTION	FYI		ACTION	FYI
ALL CABINET MEMBERS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Baker	<input type="checkbox"/>	<input type="checkbox"/>
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input type="checkbox"/>
State	<input type="checkbox"/>	<input type="checkbox"/>	Clark	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input type="checkbox"/>	<input type="checkbox"/>	Darman (<i>For WH Staffing</i>)	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input type="checkbox"/>	<input type="checkbox"/>	Harper	<input type="checkbox"/>	<input type="checkbox"/>
Attorney General	<input type="checkbox"/>	<input type="checkbox"/>	Jenkins	<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HHS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HUD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Transportation	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
Counsellor	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input type="checkbox"/>	CCCT/Gunn	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UN	<input type="checkbox"/>	<input type="checkbox"/>	CCEA/Porter	<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input type="checkbox"/>	<input type="checkbox"/>	CCFA/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
CEA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	CCHR/Carleson	<input type="checkbox"/>	<input type="checkbox"/>
CEQ	<input type="checkbox"/>	<input type="checkbox"/>	CCLP/Uhlmann	<input type="checkbox"/>	<input type="checkbox"/>
OSTP	<input type="checkbox"/>	<input type="checkbox"/>	CCMA/Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	CCNRE/Boggs	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>			

REMARKS: Attached is a memorandum from the Department of Justice regarding proposed amendments to the Freedom of Information Act. This material is provided to bring you up to date on Administration action dealing with the Freedom of Information Act. Comments should be directed to the Attorney General directly.

DOJ Review Completed.

RETURN TO: Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

Becky Norton Dunlop
Director, Office of
Cabinet Affairs
456-2800



F-100



Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

April 27, 1983

TO: Members of the Cabinet Council on
Commerce and Trade

FROM: Jonathan C. Rose *JCR*
Assistant Attorney General
Office of Legal Policy

SUBJECT: The Administration's Proposed Amendments
to the Freedom of Information Act

At last week's CCCT meeting on the export of critical technology, representatives of several departments asked about the Justice Department's proposals to amend the Freedom of Information Act, including the proposals to better protect information relating to defense technology.

At the request of the Attorney General, I am enclosing a copy of the Administration's proposed amendments to the FOIA, which were introduced as S. 1751 in October 1981. After a process of negotiation and compromise, a revised version of FOIA reform legislation was approved unanimously by the Senate Judiciary Committee in May 1982 as S. 1730. This compromise version has been reintroduced in this Congress as S. 774 (copy attached at Tab 1), and has been endorsed by the Administration. Attached at Tab 2 is a copy of my recent testimony in support of S. 774 and a brief analysis of the provisions of the bill.

Of particular concern to the members of the CCCT, both the original version of S. 1751 and the compromise version of S. 774 contain provisions to protect defense technology from disclosure under the FOIA. The bills would provide a new exemption from disclosure (Exemption 10 in S. 774) for any technical data that may not be lawfully exported outside the United States without the appropriate authorization or license.

The provision is intended to complement the existing statutory prohibitions on the export of critical military technology which might be used for purposes contrary to American interests. The principal statutes are the Arms Export Control Act, 22 U.S.C. § 2751 et seq., and the Export Administration Act of 1979, 50 U.S.C. App. § 2404. Much of this technical information subject to export controls is, however, not classified pursuant to Executive Order, and thus could not be

withheld from disclosure under Exemption 1 of the FOIA. The proposed Exemption 10 would supply this basis for withholding.

The proposal drew some criticism in the last Congress, principally from representatives of small businesses that compete for military procurement contracts and therefore require access to what is referred to as "production engineering and logistics information" for use in preparing bids and in performing such contracts. Although there appears to be a sufficient basis for the disclosure of the necessary information to contractors in other provisions of law, these contractors generated some controversy over the proposed exemption by arguing that the FOIA is necessary to assure their access to this information.

The compromise version of S. 774 addresses these concerns by adding a new § 560 to 5 U.S.C. to authorize agencies to establish reasonable procedures to provide limited access to certain technical data to qualified contractors. Unlike disclosures under the FOIA, disclosure under § 560 would be discretionary and would be made with such restrictions against redissemination as necessary. This would permit access by contractors while allowing agencies to deny access by others.

In a number of other areas, S. 774 would make much needed improvements in the provisions of the FOIA. The principal focus of the bill is in the area of law enforcement, where it would make a number of extremely important and long overdue changes to prevent its abuse by those who would subvert effective law enforcement. Principally, these changes would increase the protection for investigatory records and records relating to confidential informants, and would provide substantial protection against the disclosure of information relating to organized crime. Although these changes, in a few respects, do not go quite far enough to remedy the demonstrated weaknesses in the present law, there is no doubt that the changes made by the bill would accomplish the greatest part of what the Administration set out to do in advancing changes to improve effective law enforcement.

Other improvements in the bill would permit agencies to charge the full cost of processing FOIA requests, subject to provisions for waiver of these fees; extend somewhat the existing time limits of the Act for processing requests; provide greater protection for agency manuals and instructions to investigators, auditors and negotiators; exempt Secret Service records that relate to its protective function; broaden the existing personal privacy exemption; and provide new procedures to protect against the disclosure of confidential business information.