

designee to obtain advice on the question whether to seek invocation of the privilege by the President.

"(2) If, after a prompt and thorough consideration, the head of the agency and the Attorney General or his designee agree that compelling circumstances do not exist for invoking executive privilege, the information requested shall be made available immediately to the committee, subcommittee, or Office requesting that information. If the head of the agency and the Attorney General or his designee believe that compelling circumstances exist for invoking executive privilege, they shall recommend to the President in writing that the privilege be invoked. If 30 days after an agency has received a request for information, no such recommendation has been transmitted to the President, such information shall be made available immediately to the committee, subcommittee, or Office requesting the information.

"(3) If the President invokes executive privilege with respect to any information requested, such committee, subcommittee, or Office requesting the information shall be furnished promptly with a statement by the President in writing giving his reasons for invoking executive privilege with respect to the information so requested. If the President does not invoke executive privilege with respect to information so requested within 30 days after a recommendation seeking invocation of the privilege has been transmitted to the President, such information shall be made available immediately to the committee, subcommittee, or Office requesting that information.

"(f) If the General Accounting Office determines that any information requested of an agency by any such committee, subcommittee, or Office has not been made available within a period of 60 days after the request has been received by that agency, and if during such period the President has not signed a statement invoking executive privilege with respect to that information, no funds made available to that agency shall be obligated or expended commencing on the 70th day after such request is received by such agency or employee of that agency, unless and until such information is made available or the President invokes executive privilege with respect to such information."

(b) The analysis of such chapter 3 is amended by adding at the end thereof the following new item:

"306. Availability of information to Congress and the General Accounting Office."

APPENDIX 2

SPECIAL GOVERNMENT INFORMATION SUBCOMMITTEE, OF THE COMMITTEE ON GOVERNMENT OPERATIONS, Washington, D.C., February 15, 1962.

Hon. JOHN F. KENNEDY,
President of the United States,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: In your letter of February 8, 1962 to Secretary McNamara you directed him to refuse certain information to a Senate Subcommittee. The concluding paragraph of your letter stated:

"The principle which is at stake here cannot be automatically applied to every request for information. Each case must be judged on its merits."

A similar letter from President Eisenhower on May 17, 1954 also refused information to a Senate Subcommittee, setting forth the same arguments covered in your letter. President Eisenhower did not, however, state that future questions of availability of information to the Congress would have to be answered as they came up.

I know you are aware of the result of President Eisenhower's letter. Time after time Executive Branch employees far down the administrative line from the President fell back on his letter of May 17, 1954 as authority to withhold information from the Congress and the public.

Some of the cases are well known—the Dixon-Yates matter and the investigation of East-West trade controls, for instance—but many of the refusals based on President Eisenhower's letter of May 17, 1954 received no public notice. A report of the House Committee on Government Operations covering the five years from June, 1955 through June, 1960 lists 44 cases of Executive Branch official's refusing information on the basis of the principles set forth in the May 17, 1954 letter.

I am confident that you share my belief that your letter of February 8, 1962 to Secretary McNamara should not be seized upon by Executive Branch employees—many of them holding the same policy-making positions of responsibility they did under the Eisenhower Administration—as a new claim of authority to withhold information from the Congress and the public. A Subcommittee staff study indicates that during the year between the time you took office and February 8, 1962, the claim of an “executive privilege” to withhold government information was not used successfully once, compared to the dozens of times in previous years administrative employees held up “executive privilege” as a shield against public and Congressional access to information.

Although your letter of February 8, 1962 stated clearly that the principle involved could not be applied automatically to restrict information, this warning received little public notice. Clarification of this point would, I believe, serve to prevent the rash of restrictions on government information which followed the May 17, 1954 letter from President Eisenhower.

Sincerely,

(s) JOHN E. MOSS, *Chairman.*

THE WHITE HOUSE,
Washington, March 7, 1962.

Hon. JOHN E. MOSS,
*Chairman, Special Government Information Subcommittee of the
Committee on Government Operations*

DEAR MR. CHAIRMAN: This is in reply to your letter of last month inquiring generally about the practice this Administration will follow in invoking the doctrine of executive privilege in withholding certain information from the Congress.

As your letter indicated, my letter of February 8 to Secretary McNamara made it perfectly clear that the directive to refuse to make certain specific information available to a special subcommittee of the Senate Armed Services Committee was limited to that specific request and that “each case must be judged on its merits”.

As you know, this Administration has gone to great lengths to achieve full cooperation with the Congress in making available to it all appropriate documents, correspondence and information. That is the basic policy of this Administration, and it will continue to be so. Executive privilege can be invoked only by the President and will not be used without specific Presidential approval. Your own interest in assuring the widest public accessibility to governmental information is, of course, well known, and I can assure you this Administration will continue to cooperate with your subcommittee and the entire Congress in achieving this objective.

Sincerely,

(s) JOHN F. KENNEDY.

MARCH 31, 1965.

Hon. LYNDON B. JOHNSON,
*President of the United States,
The White House,
Washington, D.C.*

DEAR MR. PRESIDENT: The use of the claim of “executive privilege” to withhold government information from the Congress and the public is an issue of importance to those who recognize the need for a fully informed electorate and for a Congress operating as a co-equal branch of the Federal Government.

In a letter dated May 17, 1954, President Eisenhower used the “executive privilege” claim to refuse certain information to a Senate Subcommittee. In a letter dated February 8, 1962, President Kennedy also refused information to a Senate Subcommittee. There the similarity ends, for the solutions of “executive privilege” problems varied greatly in the two Administrations.

Time after time during his Administration, the May 17, 1954 letter from President Eisenhower was used as a claim of authority to withhold information about government activities. Some of the cases during the Eisenhower Administration involved important matters of government, but in the great majority of cases Executive Branch employees far down the administrative line from the President claimed the May 17, 1954 letter as authority for withholding in-