

This panel will be heard on Monday, March 6, at 10:00 a.m. in Room 2154, Rayburn House Office Building. We hope that initial statements by each panelist could be limited to ten minutes, to be followed by general discussion among the panel members and questioning by Subcommittee Members.

Because of the vital importance of these hearings and your own valuable experience in the field, we earnestly hope that it will be possible for you to arrange your schedule to appear. Please let us know at the earliest date if you can participate in our hearings. If there are questions, please contact the Subcommittee Staff Director, William G. Phillips—(202) 225-3741.

With best regards,
Sincerely,

WILLIAM S. MOORHEAD,
Chairman.

THE WHITE HOUSE,
Washington, February 18, 1972.

HON. WILLIAM S. MOORHEAD,
*Chairman, Foreign Operations and Government Information
Subcommittee, Committee on Government Operations,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: Thank you for your letter of February 11, 1972 inviting me to appear before the Foreign Operations and Government Information Subcommittee and to participate in its hearings on the administration and effectiveness of the Freedom of Information Act.

As a matter of long established principle and precedent, members of the President's immediate staff do not appear before Congressional committees to testify or to participate in discussions in regard to the performance of their duties on behalf of the President. This practice is, indeed, fundamental to the operation of our system of government. Therefore, I must respectfully decline your invitation.

With best regards,
Sincerely,

HERBERT G. KLEIN,
*Director of Communications
for the Executive Branch.*

(247-C(d))

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FOREIGN OPERATIONS
AND GOVERNMENT INFORMATION,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., February 4, 1972.

HON. DONALD RUMSFELD,
*Director, Cost of Living Council,
Washington, D.C.*

DEAR DON: I have read with interest the regulations promulgated by the Cost of Living Council regarding information access under the Freedom of Information Act, as published in the FEDERAL REGISTER on February 1, 1972.

As a former member of this subcommittee, you are of course aware of the necessity for the most complete access

by the public to Government information. For this reason and because this subcommittee is preparing for hearings on Government information policies, I thought I might comment on some of the provisions contained in the Cost of Living Council regulations.

Section 102.3(b) is confusing as it apparently limits access to information on investigations where no violations have occurred to the complainant or persons who have specific knowledge of a complaint. This appears to be in conflict with the Act, which provides access to information to all persons regardless of position, and appears to be in conflict with Section 102.10 of your regulations which states that "Any person may file a request for records."

Section 102.4(c) is of special interest as it exempts trade secrets and other matters under the authority of the Criminal Code. Perhaps this regulatory language could be explained.

Section 102.13 requires that a request for information shall be filed on a specified form. This subcommittee has always felt that administrative burdens on the public should be avoided. The requirement of a specified form is considered especially onerous. You will also note that the Administrative Conference of the United States has specifically recommended in Recommendation 24 (copy enclosed) that the use of a form not be required by agencies under the Freedom of Information Act. Many agencies have found that any request in writing or by telephone which clearly identifies the records sought is sufficient to initiate information access processing.

Section 102.40 (d) appears to fly in the face of the specific language and intent of the Freedom of Information Act. First, it implies that there is a "need to know" obligation on the part of the person requesting the record on appeal. The "cause" rule, as you know, was specifically removed on passage of the Freedom of Information Act. Second, the requirement in this subsection that the person filing an appeal may be required to present additional evidence or information in support of the request seems to shift the burden of proof from the agency to the individual. As you are aware, the Act specifically requires the agency to substantiate its refusal. There is no burden on the public to prove the negative.

Finally, the press release issued by the Cost of Living Council on January 10, 1972, again implies in paragraph one that there is a "need to know" which must be established prior to receipt of information. This again flies in the face of the spirit of the Act.

The hearings planned by the Subcommittee will begin about March 6th. We plan an in-depth review of Government information policies centering on the administration of the Freedom of Information Act. Since you have had the unique opportunity to serve on this subcommittee during your tenure in Congress and to administer this act as a member of the Executive Branch, your insights and recommendations will be of special interest to the Congress and the public.

I will look forward to an exploration of these matters at a mutually convenient date.

With best regards,
Sincerely,

WILLIAM S. MOORHEAD,
Chairman.