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| **Refusals by the Executive Branch to**  **Provide Information to the Congress**  **1964-1973**  **\_\_\_\_\_\_\_\_\_\_\_\_**  **A SURVEY CONDUCTED BY THE**  **SUBCOMMITTEE ON SEPARATION OF POWERS**  **OF THE**  **COMMITTEE ON THE JUDICIARY**  **UNITED STATES SENATE**  **Of Instances in Which Executive Agencies of the Government**  **Have Withheld Information From Members and Committees**  **of the Congress and From the Comptroller General of the**  **United States**  Printed for the use of the Committee on the Judiciary  \_\_\_\_\_\_\_  U.S. GOVERNMENT PRINTING OFFICE  WASHINGTON : 1974  36-683 | | |

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# ACKNOWLEDGMENTS

**[\*II]** *The appreciation of the Subcommittee on Separation of Powers is due to the many Members, committees, and subcommittees of the Congress and their staffs who engaged in searching their files and their memories to report the well over 300 documented instances in which the Congress was refused information during the ten-year period covered by this study.*

*Special acknowledgment is made of the work of Mr. J. L. Pecore, Counsel of the Subcommittee on Separation of Powers, who had the major responsibility of conducting the survey. It was principally through his efforts that the survey was planned and coordinated, with the understanding and cooperation, direct assistance, and critical advice of Mr. Rufus L. Edmisten, and later Mr. Walker F. Nolan, Jr., successively the Chief Counsel and Staff Director of the Subcommittee. A major part of the workload fell upon the capable shoulders of Mrs. Jeanie O'Brien, former secretary and research assistant, for her long hours and dedicated effort in assisting in the organization, implementation, and control of the materials gathered by the survey.*

*The capable assistance and experience of Mrs. Telma P. Moore, Executive Assistant of the Subcommittee, in reviewing the drafts have improved significantly the coherence and continuity of this report. Mr. Vance C. White, Jr., who is on assignment to the Subcommittee from the Government Printing Office, has provided invaluable assistance in preparing the materials for printing.*

*The Subcommittee is also indebted to the Science Policy Division of the Congressional Research Service of the Library of Congress for its assistance, and to Mr. Lester S. Jayson, Director of the Congressional Research Service, for making that assistance possible Particular indebtedness is felt toward Mrs. Louise Becker, Science Policy Research Division, and Mr. Terry Driver, Systems Analyst, Office of the Director. Mrs. Becker and Mr. Driver, working cooperatively with the Subcommittee staff assisted in developing the method by which the pertinent reference points of the information provided by the survey could be briefed for computer ending.*

# LETTER OF TRANSMITTAL

**[\*III]** U.S. Senate,

Committee on the Judiciary,

Subcommittee on Separation of Powers,

*Washington, D.C., November 29, 1974*.

Dear Mr. Chairman: The Subcommittee on Separation of Powers respect- fully submits its report of a survey of all committees of the 93rd Congress, entitled "Refusals of the Executive Branch to Provide Information to the Congress, 1964-1973." The survey was conducted in conjunction with the Subcommittee's hearings and studies on the subject of Executive privilege.

With all kind wishes, I am

Sincerely yours,

Sam J. Ervin, Jr.,

*Chairman, Subcommittee on Separation of Powers.*

Enclosure.

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# FORWARD

**[\*V]** Within the pages of this document will be found an amazing and intriguing body of information concerned with the workings of our Government. My purpose in undertaking the survey described in this report was to satisfy the truth of the basis for my earlier apprehensions that no person really knew the full particulars of Congressional success and failure in obtaining information from the Executive Branch of Government. The actions of public officials, whether elected or appointed, to deny the Congress the information it requires in its legislative functions, or unilaterally to decide what information will be provided or which witnesses will appear, are clear encroachments upon the powers of Congress. Yet a study of the findings of the survey will reveal a full range of devices, subterfuges, preposterous extensions and assumptions of authority, and outright evasiveness used by the bureaucracy to thwart the Congress in its legitimate legislative inquiries.

This report contains detailed documentation of at least 284 reported instances in which the Executive Branch of our Government had refused to provide information which had been requested by committees and subcommittees of the Congress, from 1964 until the early months of 1973. I have preferred not to include the term "Executive Privilege" in the title of this report, for the matters reported by the survey are not limited to that means of withholding information, however dramatic those few instances of the invocation of Executive privilege have been.

The power of Congress, under our Constitution, to inquire never has been seriously in question. To the extent that Congress has acceded to Executive branch denials or the withholding of information, it has failed to enforce its authority and has vacated its power to inquire. The diversity of a legislative body, which is its very nature, easily permits incidents to become obscured. When one subcommittee or another is frustrated in its efforts to obtain essential data, the facts surrounding the rebuff often escape attention or seem too insignificant in the single instance to warrant vociferous action. It is these individual instances in which Congress is denied information, when regarded collectively, that contribute to the deterioration of the constitutional authority of Congress.

It might be productive and necessary for the Congress to take special and innovative measures to be more watchful over refusals of information. It has been suggested that procedures be devised whereby committee chairmen could report to a central office, on a, continuing basis, instances of refusals of information. A similar suggested remedy is the proposal that in each House of the Congress there be established an office which would specialize in following up on requested information that had been denied, and in assisting individual Members in enforcing the processes available to the Congress.

These and other suggestions which would provide the means by which the Congress might more zealously guard its rightful prerogatives to inquire in an effective and efficient manner must be further explored and considered as a preliminary to legislative remedy.

The results of the survey conducted by the Subcommittee on Separation of Powers have shown conclusively the need for congressional action.

Sam J. Ervin, Jr.,

*Chairman, Subcommittee on Separation of Powers*.

November 29, 1974.

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# CONTENTS

**[\*VII – IX]**

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**[\*1]** *Part I*

**Background and Analysis**

**Report of a Survey Undertaken by the Subcommittee on Separation of Powers of the Committee on the Judiciary, United States Senate, in Preparation for the 1973 Hearings on Executive Privilege, Secrecy in Government, Freedom of Information, conducted April 10, 11, 12; May 8, 9, 10, 16; and July 7, 8, 11, 26, 1973.**

**[\*2]** (This page intentionally left blank.)

**[\*3]**

# Part I—Background and Analysis

## A. PURPOSE OF THE SURVEY

In order to identify with some particularity the impediments to the flow of information from the Executive branch to the Legislative branch of government, the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary undertook to survey the experience of congressional committees in obtaining information needed to fulfill their legislative responsibilities. The survey had not the intent of inquiring merely into the exercise of so-called "Executive privilege". While technically "Executive privilege" has been invoked rarely by the Chief Executive throughout our history, nonetheless, denials by the Executive branch of information requested by the Legislative branch and by private citizens have reached proportions causing great concern in recent years. Thus, the purpose of the survey was "an effort to document all instances in which Federal officers or employees had refused to provide information requested by congressional committees and subcommittees, during the period January 1, 1964, through February 28, 1973."[[1]](#footnote-1)

Herein are published the responses received from the various committees and subcommittees of both Houses of the Congress, and from the Comptroller General of the United States. The submissions will be found to reflect nearly every issue of national importance during the period treated by the survey, and in a majority of cases are documented by correspondence, excerpts from hearings records,[[2]](#footnote-2) *Congressional Record* excerpts, or newspaper articles.

## B. ORGANIZATION OF THE RESPONSES TO THE SURVEY

In view of the wide variety of subject matter, personalities, circumstances, modes of refusal, and executive departments and agencies involved in the incidents reported by the respondent committees and subcommittees of the Congress, considerable thought has been given to the problem of organizing the material in a manner for presentation which would be most useful to the reader. It was realized early in the review of the documents received that a relatively complex system of indexing would be required if visibility was to be given to the survey responses. Subsequently, the computer services of the Congressional Research Service of the Library of Congress were utilized to assist the Subcommittee on Separation of Powers staff in generating the specialized indices which are found in Part II of this report.

In Part III of the report are presented the specific instances of refusals by the Executive branch to respond to inquiries by the Legislative branch. These are arranged in order of the file numbers assigned to the committees and sub- committees at the time the questionnaire was distributed. Appendix B provides a list of the file number assigned to each committee. The following table notes briefly the assignment of these file numbers:

**[\*4]** *Table I.—File numbers used in this survey*

|  |  |
| --- | --- |
| Committees of the Senate | 1 through 17. |
| Subcommittees of the Senate | 51 through 179. |
| Special and Select Committees of the Senate | 38 through 41. |
| Committees of the House | 18 through 37, 42. |
| Subcommittees of the House | 180 through 298 and 304 through 309. |
| Special and Select Committees of the House | 399 through 303. |
| Joint Committees of the Congress | 43 through 49. |
| Office of the Comptroller General of the United States | 50. |

In addition to the Table of Contents, at the commencement of each of the major sections in Part III will be found a detailed content listing. Additionally, each of the three major summary indices of Part II (Section A, Survey Form I; Section B, Survey Form II; Section C, Survey Form III) detail all reports in file order sequence.

The manner in which the committees organized their responses took various directions. In some cases, the committee chairmen chose to coordinate their reports at the full committee level. For example, the Senate Committee on Foreign Relations (File 9) provided a consolidated report containing thirty separate and distinct cases in which that committee and its subcommittees had experienced refusals of information by the Executive branch. Other committee chairmen encouraged their subcommittees to report direct.

In most instances the committee or subcommittee chairmen forwarded their responses under the cover of a letter of transmittal addressed to the chairman of the Subcommittee on Separation of Powers. The perceptive remarks contained in these letters are of extraordinary value in that they provide understanding of the problems encountered by the Congress in obtaining vitally needed information. Accordingly, these letters of transmittal have been reproduced in full at the commencement of each file section of Part III.

In a few instances, chairmen who offered positive information concerning refusal of information by the Executive branch chose to report entirely by letter rather than utilizing the survey forms.[[3]](#footnote-3)

The foregoing pertains to reports of noncompliance by the Executive branch in providing information requested by Congress. In many instances chairmen who had not experienced difficulties in obtaining information nonetheless responded. These letters were gratefully received, and they provide worthwhile information descriptive of the congressional committee system. These letters are reproduced in Part IV of this report.[[4]](#footnote-4)

1. The inclusive dates were selected to correspond roughly with President Lyndon B. Johnson’s elected term of office through the end of the month prior to that in which hearings on Executive privilege and secrecy were held. [↑](#footnote-ref-1)
2. Refusals of information relative to the proceedings of the Select Committee on Presidential Campaign Activities purposely have been excluded from this study. The reader is commended to the published hearings ofthat body, especially to the Appendix to those hearings entitled "Legal Documents Relating to the Select Committee Hearings," Parts I and H, U.S. Senate June 28,1974. [↑](#footnote-ref-2)
3. See specially File Number 12, Senate Committee on the Judiciary. [↑](#footnote-ref-3)
4. See pp. 517 *et seq*. [↑](#footnote-ref-4)