

March 15, 1979

DISSENTING STATEMENT OF COMMISSIONER ABBOTT WASHBURN  
AND COMMISSIONER JAMES H. QUELLO

Any Commission response to a Freedom of Information Act request begins with the underlying goal of the FOIA, which is to facilitate disclosure of information to the public. But we also begin with the requirement that each FOIA request "reasonably describe" the government records to which access is sought. This language reflects changes made by the 1974 Amendments to the FOIA which the House Report describes as "designed to insure that a requirement for a specific title or file number cannot be the only requirement for the identification of documents. A 'description' of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." H.R. REP. NO. 876, 93rd Cong., 2nd Sess. 5-6(1974).

A request for copies of all of the correspondence of Karen Hartenberger during the four years she was Director of our Children's Task Force does not meet this particularity test. It is not enough that the request provide sufficient data to locate the records. The description must also enable them to be located without an unreasonable amount of effort. Although this request was narrowed from the initial application, the revised version still does not comply with the Act's requirement.

In addition to the "particularity" aspect, we are also concerned that fulfilling defective over-reaching requests of this kind will injure

169

one quality of agency actions by inhibiting the decisionmaking processes.

The Supreme Court has recognized the importance of protecting the "frank discussion of legal or policy matter in writing" within the government.

EPA v. Mink, 410 U.S. 73, 86-87 (1973). Harrassing government agencies with broad requests and "raiding" files as was done in this instance will diminish creative expression of FCC personnel. Commission decisions will likely reflect that impoverishment, and the public interest will not be served.

The Department of Justice has solicited our comments on the costs and benefits of the FOIA. It was clear from our discussion today that a majority of Commissioners is concerned about the burdens which are imposed by FOIA requests. In this case a member of the staff spent two weeks servicing this one. We have instructed the Executive Director and the General Counsel to prepare a briefing paper outlining our experience with the FOIA and the initiatives which the Commission has available to it to remedy the problems which are identified. It is possible that the remedy may require legislative changes. The General Counsel has informed us that other government agencies are also alarmed and may be seeking amendments to the law. We are pleased that it was the sense of today's meeting that the FCC should align itself with these efforts.

Reasonable access by the public to its government is a goal we all support. But excesses such as those demonstrated by this item will have costly and negative consequences. Steps should be taken to see that they are avoided.