Freedom of Information: NSF Accused of Infringing Act

The National Science Foundation, not usually regarded as the most secretive agency in Washington, has become embroiled in a sharp altercation over interpretation of the Freedom of Information Act. The foundation stands accused of deeds which "appear to violate both the spirit and intent of the law," such as barring reporters from meetings that should be open, refusing to disclose hundreds of official documents, and demanding a fee of more than $20,000 as the condition for disclosing certain others.

NSF officials do not dispute that the documents and meetings in question have been held confidential, but say that these instances should be seen in the context of the far greater number in which disclosure was the rule. They say that the Freedom of Information Act is a young law still in the process of being interpreted by the courts, and that it is often genuinely difficult for agency officials to know where to draw the line between releasing information and invoking one of the nine exemptions permitted by the act.* They deny that they have violated the act in letter or in spirit.

The agency's accuser is Arthur Kranish, a journalist who by vigorous use of the act has acquired a great deal of information from the agency and many stories which others have missed. Kranish is a former wire service reporter who, with the aid of a small staff, puts out no less than five different newsletters on science related subjects. One of the newsletters, *Science Trends*, has the NSF in its sphere of interest, and in a recent issue he took the agency severely to task for its administration of the Freedom of Information Act.

Kranish believes that the act has been very underused by most news media. He has been no slouch at using the act himself. Of the 146 requests under the act which were received by the NSF last year, 101 came from Kranish, the only reporter to invoke the act. (NSF officials note that they received requests from Kranish at an average rate of one every two and a half working days). As he acknowledges, the agency has shown him hundreds of documents which would not otherwise have been available, such as the correspondence of some 72 offices of the NSF, including the director's.

On the other hand, almost a fifth of Kranish's requests have been denied, in his view because of the agency's unjustifiably restrictive interpretation of the act. He notes, for example, that the NSF sent Congress a report with a strong statement vowing adherence to the act, along with a request that part of the report not be made public on the grounds that it was exempt from disclosure.

The exempt part, which Kranish obtained by other means, turned out to be a memorandum from NSF general counsel C. F. Brown which, Kranish reported, provided the National Science Board "with numerous suggestions on steps which can be taken to 'insulate' documents from disclosure." Reports, for example, are liable to disclosure under the act. Brown advised the board that statements of committee discussions, if not formal reports, should not be called reports, but could be referred to in the minutes as "activities," and that the Board chairman, instead of "reporting" the activities could "inform the Board" of them, Kranish noted in *Science Trends*.

A copy of Brown's memorandum was furnished to *Science* by NSF public information officer Jack Renirie. Renirie concedes that the document has some unfortunate wording but views it as a "straightforward attempt" to inform the National Science Board of how the act was likely to apply. The memorandum concludes by advising the board to "adopt a broad standard of disclosure," and hence cannot be seen as an incitement to clandestine practice. On the other hand it does, as Kranish accurately reports, contain suggestions of what the board should do if it wishes to avoid particular kinds of disclosure, and the proposed distinction between an "activity" and a "report" seems one that is at least capable of being drawn rather fine.

Another instance of "evasion through linguistics," as Kranish calls it, occurred when he asked to see a particular file and was told it didn't exist. The file was later produced, along with the explanation that the file was not a file but merely "temporary correspondence records maintained by [a] secretary for logistic purposes." Renirie notes that the official in question was unaware that the file existed, and provided it as soon as he discovered his mistake.

Kranish complains that representatives of *Science Trends* have been physically barred, sometimes by uniformed guards, from attending advisory committee meetings which should have been open to the public under the Federal Advisory Committee Act. The NSF's position was that it was entitled to close the meetings under the exemptions permitted by the act. Kranish disagreed. As he told *Science*, "It seemed to me that this was a violation of the act because its whole purpose was to get out of this shadow government system, in which some people, those on the committee, were getting advance information ahead of other people." He informed the NSF that he planned to attend the meetings anyway, whereupon the agency arranged for guards to keep him out.

Kranish's most extended difference with the NSF concerns records relating to what is known as the director's resource fund. Kranish is interested in seeing records of the fund because, as he says darkly, "If I wanted to, that is what I would call a slush fund—it sounds to me like a slush fund but I am not going to say it is." NSF officials deny that the monies are a slush fund. The fund, which amounts to about $10 million each year, is used to support high priority grant applications or other unexpected contingencies which occur after the normal budget has been committed, they say.

Kranish has asked to see all the documents relating to the fund over a 10-year period up to last June. The NSF claims that to fulfill his request it would have to recall 506 boxes of documents from the federal archives, and employ four clerk typists to work for 20 weeks in processing them. The total cost, which the agency has asked Kranish to bear, would amount to $20,580.

Kranish refuses to accept the NSF's estimate because he says that most of the cost is for screening documents. In his view this is an illegitimate charge because although the act makes provision for search and copying fees, it says nothing about screening. The NSF has not reduced its estimate, however, and the issue remains at an impasse.

Persistent invocation of the Freedom

*The Freedom of Information Act (see *Science*, 4 February 1972, p. 498) stipulates that the government shall provide the public with any information requested unless the request falls within one of nine permitted categories of exemption, such as national security, personnel records, and inter- or intra-agency memoranda. The burden is on the government agency to show cause why the information should not be provided, and a recent revision of the act provides penalties for officials who capriciously deny information. A companion law, the Federal Advisory Committee Act, requires that meetings of government advisory committees be open to the public unless one of the permitted exemptions can be shown to apply.

of Information Act has gained stories for *Science Trends* on topics such as the NSF's relationship with NOVA, the science television series of which NSF is a minor sponsor; the costs of an NSF-Cornell University dedication ceremony to mark the resurfacing of the Arecibo telescope; a shortage of funds to support an expansion negotiated by the National Academy of Sciences in the exchange program with the USSR; a scheme under consideration in the NSF to cut administrative costs by awarding fewer but larger grants; and criticisms by members of the NSF's advisory committee for research which led to the committee's abolition.

Kranish's differences with the NSF are hard to adjudicate (and a fellow reporter probably should not even try to), not least because of the frictions the dispute has engendered. Kranish calls it a "sometimes bitter controversy." NSF officials decline to characterize it that way but have clearly been put on edge by his hard line posture. Kranish has even threatened to sue the agency for defamation because it gave *Science* a report prepared for internal purposes which sets out the NSF's defense to Kranish's charges.

Feeling among agency officials is that although most of the facts in Kranish's article are correct, they are in some cases one-sided, and are in general unfair. Kranish, for example, accuses the agency of taking "a severe anti-information stance." But the NSF has provided him with "literally thousands" of documents, says Renirie. (The *Science Trends* article concedes that hundreds of documents have been made available, but says that this was done "sometimes voluntarily, sometimes under threat of court action.")

According to Renirie, many of the documents which Kranish has asked for under the Freedom of Information Act would have been made available even without the act. The NSF may even have been more open than the act really requires; in Renirie's view, the act provides for public access to particular documents, but he questions whether it was really intended to permit fishing expeditions, such as reading through all the correspondence of the NSF director. Yet this Kranish has been allowed to do. "I deeply believe that this agency is the most open you will find," Renirie says.

Kranish, on the other hand, feels strongly that the agency is not being as open as the law now requires, and that he is within his rights to press as hard as he can. Other reporters covering the NSF certainly stand to benefit from his single-handed efforts to get the maximum advantage from the act. It is perhaps only to be expected that the NSF should put up occasional resistance, particularly while the exact meaning of the act is still under test. The differences between Kranish and the agency are perhaps not so much a matter of rights and wrongs but a natural tension between the possessors and dispensers of information which will persist until the new rules of the game become established.

—NICHOLAS WADE

Briefing

Rad-Wastes and the Next Civilization

Some strange perspectives on the problem of dealing with radioactive wastes are afforded in a major new assessment commissioned by the Energy Research and Development Administration. The study,* assembled for ERDA by the Battelle Pacific Northwest Laboratories, comes to no conclusions but describes both the proved and the possible techniques for coping with the wastes from nuclear power plants.

The Methuselan life-span of certain radioactive wastes compels the authors of the ERDA report to think ahead ten thousand years and more. It is "reasonable to assume," they say, that there will be another ice age within this period, so that the waste depository must be able to withstand sea level lowering, crustal adjustment, vast climatic change, and the other rigors of a glacial epoch.

With due humility, the authors go on to recognize that this particular civilization may not be around in ten thousand years time. They therefore give serious consideration to what would happen if a future civilization should unknowingly sink drillholes in the area of the waste depository. To reduce such a possibility, the Battelle authors say, the depository should not be located in any mineral rich area which future civilizations might decide to mine. Even if drilling were to take place, the chances of a direct hit on a radioactive waste canister are small. Should a hit occur nevertheless, "It seems logical to assume that any civilization having the technical capability to drill hundreds of meters into the earth in search of energy resources would also have the sophistication to recognize a waste repository."

At present the most favored option for dealing with long-lived wastes is by burial in stable geological structures such as salt beds. But the Battelle authors pay careful attention to more exotic methods that may become competitive in the future, such as emplacement in ice sheets, or on the deep ocean floor, or in space.

Ice sheet burial is a particularly intriguing way of bidding farewell to the wastes. One method is simply to place the canisters on the surface of the Antarctic ice cap. Through the heat generated by the decaying wastes, they would melt through the ice at the rate of a meter to a meter and a half per day, striking rock bottom after a 5- to 10-year descent. Attaching an anchor to the canister would stretch the journey out to 30,000 years.

A more ingenious scheme would be to arrange matters so that the density of the waste canister is intermediate between that of ice and water. In this case the rate of descent would be much slower, and once the canister ceased to generate heat, it would descend no faster than the ice particles in which it was embedded.

The only impediment to these proposals is that an international meeting held in 1974 declared the Antarctic ice sheet to be an unsuitable site for the disposal of radioactive wastes.

Though the Battelle report refrains from evaluating the disposal technologies it describes, others have not scrupled to do so. Secretary of Commerce Elliot L. Richardson assured the Joint Committee on Atomic Energy last month that, from the data in the Battelle report, he was "confident that we will be able to safely handle radioactive wastes from the nuclear power plant program.

Despite its importance, the problem of nuclear waste disposal has received only fitful attention from the federal government and the merest fraction of the overall funds devoted to nuclear power development. Though salt mine burial is the likeliest option for the immediate future, the government's first site of choice, at Lyons, Kansas, proved unsuitable, and the second, in New Mexico, is still under evaluation. George D. DeBuchananne, chief of the Geological Survey's Office of Radiohydrology, believes a safe salt site can eventually be found but considers that too little work has been done to be sure that salt is better than other geological media.

—NICHOLAS WADE

*"Alternatives for Managing Wastes From Reactors and Post-Fission Operations in the LWR Fuel Cycle." Obtainable from the Division of Nuclear Fuel Cycle and Production, ERDA, Washington, D.C. 20545.