DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

August 17, 1977

FOI

Mr. Robert Gellman
Subcommittee on Government Information
and Individual Rights
House Committee on Government Operations
Room B 349 C
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Gellman:

This is in regard to your indication that your Subcommittee may conduct hearings in early October on problems involving the (b)(4) Exemption of the Freedom of Information Act. It was agreed that one problem that could be considered will be premature access to information of benefit to competing science investigators.

Enclosed are two reports on "Disclosure of Research Information" under the Freedom of Information Act drafted by "The National Commission on Human Subjects" and the "President's Biomedical Research Panel." Both of these reports were responsive to a joint charge from the House Committee on Interstate and Foreign Commerce and the Senate Committee on Labor and Public Welfare. As you will note, the reports recommend legislation in order to clarify the predictability of access to research information under the (b)(4) Exemption. This has been a matter of great concern to the science community, as evidenced by the over 240 letters submitted to the National Commission as an aid in preparing their report. One of the representative examples of the 240 responses is the attached letter from Philip Handler, President, National Academy of Sciences, to the Commission.

As you noted, this problem was given special treatment in drafting Section 480 of the Rogers bill H.R. 7897 on "Recombinant DNA." I would suggest that the problem will most likely evoke a need for similar treatment as future science programs are established unless disposed of by a generic action by your Subcommittee.

As indicated, I wonder whether your suggested invitation to the Environmental Protection Agency (or Food and Drug Administration) will elicit

FILE COPY

| OFFICE | SURNAME | DATE | OFFICE | SURNAME | DATE | OFFICE | SURNAME | DATE |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

the kind of information your Subcommittee will need to assess this problem. Accordingly, I would hope that scientific investigators who are concerned with the unpredictability of release of research information under the (b)(4) Exemption will be provided representation at whatever hearings your Committee deems appropriate.

Sincerely,

Norman J. Latker
Patent Counsel

Enclosures

HEW/OS/GCB NJLatker/ack

bcc; Lowell Harmison
Robert Ellert, Commerce
David Eden, ERDA
Wm. Knox, NTIS
Barry Grossman, PTO
James Denny, ERDA

FILE COPY

| OFFICE | SURNAME | DATE | OFFICE | SURNAME | DATE | OFFICE | SURNAME | DATE |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |