At Key West, Florida
April 3, 1950

FILED BY
MR. HOPKINS

Dear Senator Tydings:

The Secretary of State, the Attorney General, and the Chairman of the Civil Service Commission have referred to me the matter of the subpoenas which have been served on them, directing them to appear on April 4, 1950, before the subcommittee established by the Committee on Foreign Relations of the Senate, pursuant to S. Res. 231, 81st Congress, and to produce various documents and papers relating to a number of persons whose names appear on a confidential list attached to each subpoena.

In my letter to you of March 26, 1950, I stated the reasons why the confidential loyalty files of Government employees should not be produced. I should like at this time to re-state those reasons briefly.

The disclosure of these files would seriously prejudice the future effectiveness and usefulness of the Federal Bureau of Investigation as an investigative agency; the embarrassment, and even danger, to those who have given confidential information cannot be over-emphasized. Disclosure would not only deprive the Federal Bureau of Investigation and other investigative agencies of the Government of the availability of those confidential informants in the future, but would also gravely impair their ability to gather confidential information from other sources as well.

The employee loyalty program depends upon the investigative services of the Federal Bureau of Investigation. The disclosure of the files would, therefore, result in serious harm to that program. Such disclosure, instead of helping to keep disloyal people out of the Government service, would impair the very effective means we now have for accomplishing that purpose.

The investigative files of the Federal Bureau of Investigation do not contain proven information.
alone. They include any unverified charges and allegations, leads and suspicions. Disclosure of the files would, therefore, result in serious injustice to, and damage to the reputations of, many innocent persons.

The reasons why disclosure of the files would be contrary to the public interest were fully stated by the Director of the Federal Bureau of Investigation when he testified before your subcommittee on March 27, 1930. The Attorney General at the same time not only fully stated the reasons of public policy which compel the maintenance of the confidential nature of the files, but also discussed the Constitutional precedents which support without any question my authority to take the position I have in this matter.

The authority of the President in this regard has been recognized since the beginnings of our Government. Our first President and his Cabinet, in considering the first request made by a House of Congress for executive papers, concluded that while the Congress might call for papers generally, the Executive ought to communicate only such papers as the public good would permit, and ought to refuse those the disclosure of which would be contrary to the public interest.

No President has ever complied with an order of the Legislative Branch directing the Executive Branch to produce confidential documents, the disclosure of which was considered by the President to be contrary to the public interest. The Presidents who have had to meet that issue are numerous, and they have uniformly rejected such encroachments on the Constitutional power of the President. George Washington, James Monroe, Andrew Jackson, and Grover Cleveland are only a few of the Presidents who have followed this course. In our own lifetime, William Howard Taft, in his book "The Chief Magistrate," affirmed his faith in the Constitutional power of the President on this issue. And also within this century, Attorneys General serving in the Cabinets of Presidents Theodore Roosevelt, Taft, Wilson, Coolidge and Franklin D. Roosevelt, have re-stated the responsibility of the Executive Branch to maintain the integrity of confidential information when its disclosure would be contrary to the public interest. I would be derelict in my duty if I failed to do so.

I have felt obliged, therefore, to direct the Secretary of State, the Attorney General and the Chairman of the Civil Service Commission not to comply with your subpoenas.
As I have already informed you, I wish to cooperate with your Subcommittee in every reasonable way, and for that reason I have asked the bipartisan Loyalty Review Board to make an independent review of the loyalty cases before your Subcommittee.

Sincerely yours,

(Typed) HENRY S. THOMAS

Hon. Millard E. Tydings, Chairman,
Subcommittee on Loyalty of State Department Employees,
Committee on Foreign Relations
United States Senate
Washington, D. C.