



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 3, 1976

FILE NO. S-1191

PUBLIC RECORDS & INFORMATION:
Disclosure of Information
Concerning Currency Exchanges

A.T. Tsoumas, Director
Department of Financial Institutions
160 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Tsoumas:

This responds to your letter wherein you ask whether you are required or permitted to release the following items to a newspaper:

1. Applications for licenses which were filed by certain licensed currency exchanges.
2. Agreements filed with the Department which show sales and purchase prices of certain currency exchanges.
3. Financial statements which were filed by certain licensed currency exchanges.
4. Notice of any disciplinary or revocation action against certain currency exchanges.

A.T. Tsoumas - 2.

5. All files on currency exchanges that were liquidated or placed into receivership from 1973 to present.

Pursuant to section 19 of "AN ACT in relation to the definition, licensing and registration of community currency exchanges, etc." [Community Currency Exchanges Act] (Ill. Rev. Stat. 1975, ch. 16 1/2, par. 49), you should release Item 4 to the newspaper. Section 19 provides that disciplinary and revocation orders of the Department are part of the record that the Director is required to keep; this record is a public document. Section 19 reads in pertinent part:

"The Director may make and enforce such reasonable, relevant regulations, directions, orders, decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. All such regulations, directions, orders, decisions and findings shall be filed and entered by the Director in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. * * *" (emphasis added.)

The information in Items 1 through 3 is material that a licensee must submit under the Community Currency Exchanges Act. The information in Item 5 includes material required

A.T. Tsoumas - 3.

to be submitted and also may include other types of information, such as investigatory material, on exchanges that were liquidated or placed into receivership. These items of information qualify as records. Section 2 of the State Records Act (Ill. Rev. Stat. 1975, ch. 116, par. 43.5) defines "record" as follows:

"'Record' or 'records' means all books, papers, maps, photographs, or other official documentary materials, regardless of physical form or characteristics, made, produced, executed or received by any agency in the State in pursuance of state law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State or of the State Government, or because of the informational data contained therein. * * *"

The material that currency exchanges were required to submit to the Department are "records" according to this definition; it is material received by the Department pursuant to State law. Investigatory material on exchanges that were liquidated or placed into receivership also qualifies as a "record" since it was produced or received by the Department in connection with public business and was preserved as evidence of the Department's policy, decisions or procedure.

A.T. Tsoumas - 4.

The State Records Act does not provide that the public has a right to inspect all records. The Act requires only that the State's financial records be open to public inspection (Ill. Rev. Stat. 1975, ch. 116, par. 43.6). There is no statute that requires Items 1, 2, 3 and 5 be open to public inspection; neither is there a statute that protects these items of information from public disclosure.

To obtain information that is neither specifically accessible nor specifically inaccessible, the public must look to the common law right to inspect public records. This right was recognized by the court in People ex rel. Gibson v. Peller, 34 Ill. App. 2d 372, where the court stated at pages 374-75:

"

* * *

The right of relators to reproduce the public records is not solely dependent upon statutory authority. There exists at common law the right to reproduce, copy and photograph public records as an incident to the common law right to inspect and use public records. Good public policy requires liberality in the right to examine public records. In 76 CJS, Records, p 133, the author states: 'The right of access to, and inspection of, public records is not entirely a matter of statute. The right exists at common law, and in the absence of a controlling statute, such right

is still governed by the common law. . . .
all authorities are agreed that at common law
a person may inspect public records . . . or
make copies or memoranda thereof.' * * *"

Although it is to be liberally construed (Weinstein v. Rosenbloom, 59 Ill. 2d 475, 482), the right to inspect public records is not without qualification. There may be interests that justify withholding public records from public inspection. The court in People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090, explained that interests such as confidentiality, privacy and the need to protect sources of information may qualify the public's right to know. The court stated at pages 1092-93:

" * * *

The people's right to know, however, must be balanced by the practical necessities of governing. Public officials must be able to gather a maximum of information and discharge their official duties without infringing on rights of privacy. Certain information possessed by government is often supplied by individuals and enterprises that have no strict legal obligation to report but do so on a voluntary basis, with the understanding the information will be treated as confidential. Therefore, it is important to consider whether disclosure would constitute an invasion of privacy; whether there could

be prejudice to private rights or give an unfair competitive advantage; whether it would prevent responsible business people from serving the public; whether it would discourage frankness; and whether it could cut off sources of information upon which a government relies.

* * *

Public records may be withheld from public inspection for other reasons. There is no right to inspect a public record when inspection is sought for an unlawful purpose or when inspection can serve no useful purpose. (State ex rel. Charleston Mail Assoc. v. Kelly, 143 S.E. 2d 136

(West Virginia, 1965).) It may also be proper to withhold information when public disclosure would jeopardize pending litigation. In any event, the right to inspect public records is subject to reasonable regulation which protects the functioning of government; reasonable rules regarding the time and manner of examination may be established.

Chicago Title & Trust Co. v. Danforth, 236 Ill. 554.

There are thus a variety of interests that may justify limiting access to and inspection of public records. As a result, it is not possible to give a definitive answer concerning Items 1, 2, 3 and 5. You must examine the nature

A.T. Tsoumas - 7.

of each request, including the information sought, how such information came into the Department's possession and the varied interests of the public, individuals and the Department; then you must decide whether to disclose information based on a balance between the public's fundamental right to inspect public records and those interests that call for protecting public records from public disclosure.

I can, however, offer some guidelines that will assist you in striking the correct balance. Generally, the interests that qualify the public's right to know do not protect information that persons holding licenses are required to submit. This information is normally not submitted in confidence, and there is usually no reasonable expectation that information freely submitted by licensees should be protected by the right of privacy. Furthermore, the interest of protecting sources of information is clearly not a factor when information is submitted by licensees themselves. Thus, applications and sales agreements, such as those mentioned in Items 1 and 2 above, and files on exchanges which have been liquidated or placed in receiver-

A.T. Tsoumas - 8.

ship, such as those mentioned in Item 5 above, could properly be made available for public inspection.

Financial statements, on the other hand, being personal and possibly including information unrelated to currency exchanges, may be considered confidential. Illinois by statute has made such information confidential in other contexts. (See, Ill. Rev. Stat. 1975, ch. 23, par. 11-9; ch. 120, par. 9-917.) Such information may also be confidential under the federal Freedom of Information Act (5 U.S.C. 552(b)(4)). Of course, neither the federal Act nor these other Illinois statutes apply here, except to indicate general public policy.

In contrast to information submitted by licensees, there is a greater likelihood that the interests of confidentiality and security extend to information gathered by the Department's own efforts or sources. This is certainly so with regard to files and information gathered through investigations undertaken with a view to civil action or criminal prosecution.

In summary, there is a fundamental right to inspect public records; however, this right may be qualified by

A.T. Tsoumas - 9.

interests, such as those described on pages 5 and 6 above. In answering a request for information, you do have the authority to release such information unless you determine there are any of the aforementioned interests that justify withholding the information from public disclosure.

Very truly yours,

A T T O R N E Y G E N E R A L