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MEMORANDUM

July 26
August 17, 1995

TO: Principal Counsel

FROM: Jack Schwartz

SUBJECT: Public Information Act — Personal Financial Information

The Lottery Agency recently had the following issue about SG §10-617(f), the exemption for "information about the finances of an individual": Did this exemption prohibit the Lottery Agency from disclosing to the press the identity of a lottery winner who declined to appear next to the big fake check?

This exemption has broad language: "[A] custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness." An individual's "assets" would include a future stream of income from the Lottery Agency.

Yet the legislative history of the exemption suggests that its scope is not quite so broad. And the exemption must be construed together with the general rule in favor of openness about public funds. As the Attorney General has made clear many times, the public is ordinarily entitled to know how, and to whom, the government spends its money.

In reconciling these competing considerations, Andrea Johnson, Richard Afrookteh, and I concluded that the exemption did apply to the identity of a lottery winner. In so concluding, we agreed on some guidelines for applying SG §10-617(f). These guidelines might apply to issues other than the identity of a lottery winner; hence, this memo.

1. The exemption for personal financial information applies primarily to information that the State obtains about an individual's private financial activities — that is, information unrelated to the individual's financial transactions with the State itself. This construction reflects the underlying legislative objective, as evidenced by the legislative history of the provision.

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2. The exemption does not apply to contracts in which a sole proprietor gets paid for goods or services. The fact that the State is paying X dollars to a particular individual pursuant to such a contract is disclosable.

3. The exemption does apply to the identity of recipients of State funds if an individual paid money to the State in exchange for a future payment, definite or contingent, and, as an exercise of personal choice over the spending or investment of the individual's money, chose the transaction with the State rather than other opportunities of the same general kind. Thus, an individual who buys municipal bonds from a State issuer is entitled to confidentiality about that investment decision. *See* Opinion No. 85-011 (April 15, 1985) (unpublished). Similarly, in the Lottery Agency situation, an individual who chooses to give money to the State's gambling agency, rather than other gambling venues, is entitled to confidentiality about that spending decision and its lucky outcome.

These guidelines surely do not cover all possible questions about the scope of the personal finances exemption. (Nor, of course, does this discussion touch on other exemptions — for example, those covering welfare records or retirement records.) If you have any variations on the theme that you would like to discuss, please give me a call.

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