

in which they lie." *Gilman v. Philadelphia*, 70 U.S. 713 (1865) "The power vested in the general government to regulate interstate and foreign commerce involve, the control of the waters of the United States which are navigable in fact, so far as may be necessary to insure their free navigation, when by themselves or their connection with other waters they form a continuous channel for commerce among the states or with foreign countries." *Escondido Company v. Chicago*, 107 U.S. 673 (1883).

³ See: *Island Airlines, Inc. v. Civil Aeronautics Board*, 363 F.2d 120 (9th Cir., 1966); *Rosenham v. United States*, 181 F.2d 982 (10th Cir., 1942); *cert. den.* 318 U.S. 790; Annotation: Aircraft operated wholly within State as subject to Federal regulation 9 ALR 2d 485.

⁴ In so doing, the Court suggested that the matter might be better handled on the state level, but noted that this was a legislative decision.

⁵ For the purposes of this Section, acrobatic flight means an intentional maneuver involving an abrupt change in an aircraft's altitude, an abnormal attitude, or abnormal acceleration, not necessary for normal flight."

⁶ We are advised by the local office of the Federal Aviation Administration that a civil airway, Vector 98, passes directly over Baltimore's Memorial Stadium at a minimum altitude of 23,000 feet.

⁷ See also: Mr. Justice Douglas, speaking for the majority and viewing the Solicitor General's concession that there is preemption as respects "airspace management" as fatal to his argument against preemption as respects "noise control." 93 S.Ct. at 1886.

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BANKS AND BANKING

PUBLIC INFORMATION — BANK COMMISSIONER — LISTS OF BANK SHAREHOLDERS, BUT NOT PERSONAL FINANCIAL STATEMENTS, MUST BE DISCLOSED BY THE BANK COMMISSIONER—LISTS MUST CONTAIN THE NAMES OF THE BENEFICIAL OWNERS OF THE SHARES.

April 9, 1974.

Honorable William L. Wilson,
Bank Commissioner.

Under Article 11, Section 33 of the Annotated Code of Maryland 1957 (1968 Repl. Vol. with 1973 Cum. Supp.), in order to obtain the required certificate of authority to commence business, a bank must submit to you a list of its bona fide shareholders or subscribers "showing the name, residence and actual number of shares subscribed to and paid for". Under Section 73, at least once a year, this same information must again be submitted to your office.

In your letter of March 1, 1974, you asked for our opinion as to whether your office is required to disclose these lists to the public upon request under the provisions of the Public Information Act, Article 76A, Sections 1-5 of the Annotated Code of Maryland 1957 (1969 Repl. Vol. with 1973 Cum. Supp.). We have no doubt that the lists are "public records" under the broad definition of Section 1 (a) of that Act. Under Sections 2 and 3 (a) of the Act, therefore, they are subject to disclosure unless they fall within the parameters of one or more of the exceptions listed in Section 3 (a) - 3 (c).

One of the exceptions listed in Section 3 (a) (i) which requires you to deny an inspection which is "contrary to any State statute." Article 11, Section 66 provides in relevant part:

"Every bank and trust company shall keep a stock book, which shall at all times during the usual hours for the transaction of business be subject to the inspection of the officers, directors and

stockholders of the bank or trust company. Such book shall show the name and number of shares held by each stockholder. * * *

Your office has informed us that its long standing and unvarying interpretation of Section 66 is that it is a substantive limitation on the disclosure of shareholder lists limiting disclosure to only the officers, directors, and shareholders of the bank. Thus, your office has informed us that, until very recently when it acted pursuant to our verbal advice, it has never revealed the names of the shareholders to the public. That interpretation is certainly entitled to a great deal of weight, but it is not controlling. *Salisbury Beauty Schools v. State Board of Cosmetologists*, 268 Md. 32, 300 A. 2d 367 (1973). We cannot agree that Section 66 prohibits your office from disclosing the lists. We view Section 66 as relating to the responsibilities of banks and trust companies themselves. Article 76A places certain responsibilities upon the Bank Commissioner. We see no inconsistency between these two sets of responsibilities.

Another exception to the disclosure requirements is Section 3 (c) (v) which requires that the custodian deny inspection of "confidential commercial, financial . . . data furnished by or obtained from any person". The statute does not define these terms and there are no Maryland cases to aid us in determining whether the shareholder lists fall within this category.

The corresponding federal statute, 5 U.S.C. Section 552 (b) (4), exempts from disclosure "commercial or financial information obtained from a person and privileged or confidential". The federal courts have held that documents are unavailable under this exemption if they contain commercial or financial information "which would customarily not be released to the public by the person from whom it was obtained". This language was adopted from the U. S. Senate Reports on the Federal Freedom of Information Act. *Grumman Aircraft Engineering Corp. v. Renegotiation Board*, 425 F. 2d 578 (D.C. Cir., 1970); *Sterling Drug, Inc. v. F.T.C.* 450 F. 2d 698 (D.C. Cir., 1971); *M. A. Schapiro*

and *Company v. S.E.C.* 339 F.S. 467 (D.C.D.C., 1972); *National Parks and Conservation Association v. Morton*, 351 F.S. 404 (D.C.D.C., 1972); *Fisher v. Renegotiation Board*, 355 F.S. 1171 (D.C.D.C., 1973); and *Petkas v. Staats*, 364 F.S. 680 (D.C.D.C., 1973).

There is no corresponding legislative history to which we can turn in interpreting the Maryland statute. However, given the fact that the Maryland statute was enacted four years after the federal statute and the fact that both statutes are worded so similarly, it would appear that the Maryland statute is patterned after the federal statute. Therefore, federal cases are persuasive in interpreting the Maryland statute, even though all but one of those cases was decided after the Maryland statute was enacted. *St. Joseph Hospital v. Quinn*, 241 Md. 371, 216 A.2d 732 (1966).

The purpose of the federal exception to the general disclosure requirements is to prevent "the unwarranted invasion of personal privacy which might be caused by the Government's indiscriminate release of confidential information". *Grumman Aircraft, supra*.

Exemptions to the disclosure requirements are narrowly construed. *Bristol-Myers Co. v. F.T.C.*, 424 F. 2d 935 (D.C. Cir., 1970). Under the federal test, a bare allegation by an agency that the material is confidential is not enough; a relatively detailed analysis is required to support such a claim. *Vaughn v. Rosen*, 484 F. 2d 820 (D.C. Cir.), cert den, 415 U. S. 977 (Docket 73-1107, 1974); *Schapiro, supra*.

Furthermore, the federal test is an objective one, *i.e.*, the wishes of the submitter of the information is not the governing factor. *Schapiro, supra*. Thus, the fact that the lists indicating a number of shares owned may have been submitted to you with the understanding that they were confidential is irrelevant.

We have not found any federal cases dealing directly with the question of the disclosure of the names of shareholders and the amount of shares held. Rather, in applying the

aforementioned tests, federal courts have denied access to detailed financial information about a business, especially sales data, *Morton, Sterling Drug and Fisher*, all *supra*, and have denied access where disclosure would provide "significant insight and analysis of a company's financial operations", *Petkas, supra*. Obviously, this would not be true of the shareholder's lists. Thus, the federal cases do not provide much help in aiding us to apply the general test they establish to the shareholder lists in your files.

You have not provided us with sufficient information to enable us to support a conclusion that your lists containing the names, residences, and number of shares held are exempt from disclosure under the above test. We therefore specifically hold that such items must be disclosed upon request. However, if you find that disclosure would in your judgment do substantial injury to the public interest, you may apply to the District Court for Baltimore City for an order permitting you to restrict disclosure under Section 3 (f) of the Act.

In passing, we note that, where information concerning residence is requested, you need not disclose the exact street address; the state and city or county of residence is all that is required.

In our conversations on this matter, you have asked whether you must also disclose the personal financial statements which your office requires of bank incorporators and directors. We feel that such information is clearly protected under the above test; it is information which would not customarily be disclosed by the person providing it.

In your last question, you state that, in their shareholder lists, many banks list trust or trustees, including foundations, as the shareholders. Your question is whether you should be given the names of the beneficial owners of these shares. We feel that you should. Otherwise the reporting requirement can all too easily be evaded by the use of such organizations, and the requirement of Article 11, Section 33, that you be furnished with a "certified list of the *bona fide* stockholders or subscribers" will not have been com-

plied with. Use of trusts or trustees does not, in our opinion, satisfy the use of the term "bona fide" and therefore would be unacceptable. See *Greenwood v. Oates*, 251 So. 2d 665, 667 (1971) and *Merrill v. Department of Motor Vehicles*, 458 P. 2d 33, 41 (1969).

In conclusion, from the information which you have provided us, we cannot find that the shareholder names, state and city or county of residence, and number of shares owned are exempt from the general requirement of disclosure under the Public Information Act. We therefore find that you must disclose those items. Personal financial statements, however, are exempt from disclosure. Lastly, we find that the lists provided to you should contain the names of the beneficial owners of the shares.

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