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April 15, 1985

Victor Cushwa, Chairman
Local Government Bond Law Task Force
Room 119, Legislative Services Building
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Annapolis, Maryland 21401-1991

PUBLIC INFORMATION - FINANCIAL
"ASSETS, HISTORY, OR ACTIVITIES"
- MUNICIPAL BOND HOLDERS -
NAMES OF MUNICIPAL BOND HOLDERS
ARE EXEMPT FROM PUBLIC
DISCLOSURE UNDER PUBLIC
INFORMATION ACT.

Dear Mr. Cushwa:

You have requested our opinion on whether the names of municipal bond holders, on file with State or local governments, are subject to the disclosure requirements of Maryland's Public Information Act.

In an earlier letter, Assistant Attorney General Richard E. Israel concluded that records of bond holders are exempt from disclosure under State Government ("SG") Article, §10-617. Letter of Advice from Richard E. Israel, Assistant Attorney General, to Donovan Peeters, Counsel to Local Government Bond Law Task Force (November 9, 1984). We have reviewed Mr. Israel's analysis and the relevant authorities governing this issue. For the reasons expressed in his letter, a copy of which is attached, we agree with his conclusion. We add only two minor points in support of that conclusion.

As Mr. Israel pointed out, the records of municipal bond holders' names clearly are "public records" within the meaning of the Public Information Act (the "PIA"). See SG §10-611(f)

OPINION OF THE ATTORNEY GENERAL

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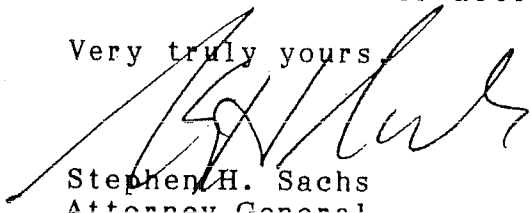
("public record" includes all documentary material received by governmental entity in connection with transaction of public business). And the PIA is generally to be construed to promote the public's access to public records, "unless an unwarranted invasion of the privacy of a person in interest would result". SG §10-612(b). Thus, ordinarily, these records would be subject to disclosure.


However, SG §10-617(f)(2) specifically provides that "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". We agree with Mr. Israel's conclusion that records of municipal bond holders' names constitute information about the "assets" of those individuals. In addition, we believe that those records constitute information about the "financial ... activities" of the named individuals. Thus, in our view, the records are unequivocally within the scope of SG §10-617(f)(2) and, therefore, the custodian must deny public inspection of them.

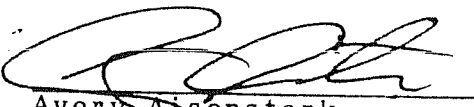
We note also that disclosure of this information might well have a chilling effect on investment in local government bonds. That is, many potential purchasers might be reluctant to purchase the bonds if the fact of their purchase would be subject to disclosure to the general public. To the extent that disclosure would have such an effect, we believe that it would be injurious to the public interest in promoting the sale of municipal bonds. Accordingly, we believe that protecting the records of municipal bond holders' names from disclosure comports well with the concerns underlying the General Assembly's clearly expressed intent to protect private financial information in general.

In summary, it is our opinion that the names of municipal bond holders are exempt from public disclosure given the provisions of SG §10-617(f), which require a custodian to deny public inspection of a part of a public record that contains information about an individual's financial assets or activities.

Very truly yours,


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November 9, 1984

Donovan Peeters, Counsel
Local Government Bond Law Task Force
119 Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991

Dear Mr. Peeters:

This is in response to your request for advice of counsel on whether the names of municipal bondholders which are on file with State and local governments are subject to disclosure under the Public Information Act. As recently revised, this Act makes public records containing "information about the finances of an individual, including assets" confidential. In my judgment, a reference to the fact that a particular person has invested in municipal bonds constitutes such information. However, I think that the Task Force should be aware that a contrary argument could be made based on the legislative history.

In your letter, you indicated that recently enacted federal legislation requires that the names of municipal bondholders be kept on file by the issuer or the transfer agent. From our recent conversation, it is my understanding that this requirement was enacted as part of a revision of the federal tax laws and that there has been no suggestion that this requirement governs public access to these names. However, in the event that these names are part of the records maintained by the State or local governments, the question has arisen whether these names would be subject to the general disclosure requirement of the Act or would be subject to the specific exclusion for financial information.

The Public Information Act, which was formerly codified as Article 76A, Secs. 1 - 5, is now codified as Secs. 10-611 through 10-628 of the recently enacted State Government Article. Section 10-613(a) provides that except as otherwise provided by law, "a

custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." A custodian includes the officers and employees of the State and the subdivisions who are responsible for public records, and "public record" means any documentary material made or received by the State or a subdivision in transacting public business. Sec. 10-611(c), (d) and (f). Unquestionably, names which are kept on file by State or local governments are "public records" within the meaning of the Act and are subject to the general disclosure requirement unless it is otherwise provided by law.

In my judgment, Section 10-617(f) provides otherwise by law. As recently enacted, Section 10-617 sets out various exclusions which a custodian must observe "unless otherwise provided by law," Subsec. (a). The exclusion in subsection (f) is, as follows:

(1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, 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.

(3) A custodian shall permit inspection by the person in interest.

Although the Act is to be construed in favor of disclosure, unless there would be an unwarranted invasion of privacy, Sec. 10-612(b), I think that a reference to the fact that a person has invested in municipal bonds would be "information about the finances of an individual, including assets." As I read it, this exclusion makes no distinction between matters of public and private finance. So long as the information concerns the finances of a particular individual, even if it is a transaction between a public agency and the individual, the matter is confidential. Should the Legislature feel that only the private finances of an individual should be confidential and that an individual's financial dealings with public agencies should be subject to disclosure, the law would have to be amended.

It is commonly said that the cardinal rule of statutory construction is to ascertain the intent of the Legislature and that this is done, in the first instance, by examining the words which the Legislature has used. If there is no ambiguity, it is inappropriate to look beyond the words of the statute. Although the words of the financial information exclusion are not, in my judgment, ambiguous, I think that the Task Force should know that the legislative history of this exclusion suggests a narrower intent than the words of the present statute.

Section 10-617(f) was originally enacted into law by Chapter 431 of 1982. This Chapter added a further mandatory exclusion to Section 3(c) of Article 76A, as follows:

(xi) Records describing an individual person's finances, income other than salaries of public employees, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except that such records shall be available to the person in interest;

The reference to "records describing an individual person's finances ... assets" suggests that the exclusion covers only information which describes some aspect of a person's financial affairs but does not cover the mere fact that a person has a particular kind of asset.

The 1982 law was proposed by the Governor's Information Practices Commission. It is evident from the Commission's report and the suggested bill that one of its principal concerns was affording greater protection to legitimate interests of personal privacy. See Final Report of Governor's Information Practices Commission at vi-viii and 559-570. The resulting law, which also added a criminal penalty for violation of the privacy provisions, was introduced as House Bill 1481 and the mandatory exclusion on financial information was enacted as proposed by the Commission in its report, except for the insertion of the phrase "other than salaries of public employees." In an explanation of the proposed bill, the Commission stated, with reference to the financial information exclusion, that it would "require custodians to prevent the disclosure, except as otherwise provided by law, of personally identifiable financial data, such as income, bank balances and credit reports." ¹ This also suggests a concern

¹ In its undated and untitled explanation, the Commission discussed the financial information exclusion as follows:

A. PROPOSAL

These lines will require custodians to prevent the disclosure, except as otherwise provided by law, of personally identifiable financial data, such as income, bank balances and credit reports. It is important to emphasize the phrase "except as otherwise provided by law". This amendment will have no impact whatsoever on those records which the Legislature has determined should be available for public inspection. Thus, for example, financial disclosure statements of public officials will continue to be disclosable public documents. The Commission has also added language in this section to make it absolutely clear that salaries of government employees shall continue to be open to public inspection.

B. CURRENT PROBLEM

The basic problem in this area is that there is a significant variation in statutes governing financial data. A number of record systems containing financial information, such as income tax data, are governed by explicit confidentiality provisions. However, other types of financial information are inadvertently disclosable under the Public Information Act. A case in point

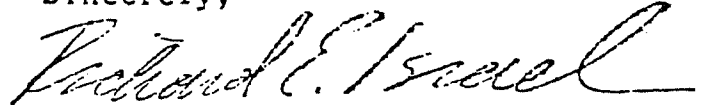
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for the disclosure of something more than the mere fact that a person has a particular kind of financial interest. Although the Commission's report and explanation cannot be regarded as a definitive statement of legislative intent, the enactment of the Commission's proposed bill indicates that the Legislature generally shared the concerns of the Commission.

Although the legislative history of the financial information exclusion suggests a more focused concern with the disclosure of information which would describe some aspect of a person's financial affairs and not with the disclosure of information which merely states that a person has a particular kind of interest, the broad reference in the current law to "information about the finances of an individual, including assets" means, in my judgment, "any financial information," including the fact that a person has a financial interest. Moreover, no distinction is made between information on an individual's financial dealings with public agencies and purely private financial matters. As the names of municipal bondholders constitute information about a particular financial interest, State and local records of their names are confidential under the mandatory financial information exclusion.

Although this letter is not an Opinion of the Attorney General, I have discussed this matter with Avery Aisenstark, Chief of Opinions and Advice, and he concurs with the conclusion I have reached.

Sincerely,



Richard E. Israel
Assistant Attorney General

REI:mar

cc: Avery Aisenstark, Esq.
Dennis M. Sweeney, Esq.
Thomas E. Plank, Esq.

is that data collected from low-income families applying for loans under the Maryland Housing Rehabilitation Program. Such data includes present monthly income, monthly housing expenses, assets, liabilities, credit reports, and personal financial statements. Because there is no reference to confidentiality of this data in the Annotated Code, the data becomes subject to the disclosure provisions of the Public Information Act.

The Commission's Final Report stated that "The Commission also believes that a specific exemption for financial data, including assets, liability, net worth, bank balances, and credit worthiness be specifically provided as an exemption to public disclosure under the Act." Final Report at viii.