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SPRINGFIELD

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PUBLIC RECORDS AND INFORMATION:
Disposal of Records Collected
Pursuant to Financial Institutions
Disclosure Act

Edgar F. Callahan, Director
Department of Financial Institutions
227 South Seventh Street, Room 204
Springfield, Illinois 62706

Dear Mr. Callahan:

I have your letter wherein you ask what procedure should be followed in disposing of the records that were collected by the Director of the Department of Financial Institutions pursuant to the Financial Institutions Disclosure Act. Ill. Rev. Stat. 1977, ch. 95, par. 201 et seq.

The problem of disposing of these records has been occasioned by the case of Glen Ellyn Savings and Loan Ass'n v. Tsoumas, No. 49339, _____ Ill. 2d _____. In that case the

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Illinois Supreme Court held that the Financial Institutions Disclosure Act was invalid in toto. The Court relied on a "self-destruct clause" in the Act. (Ill. Rev. Stat. 1977, ch. 95, par. 208.) According to this clause, the fact that Federal legislation had preempted the application of the Act to federally chartered institutions resulted in making the Act inapplicable to all financial institutions.

It is my opinion that the Director must dispose of the records in question according to the procedure established by the State Records Commission pursuant to the State Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.4 et seq.); no such record may be disposed of unless approval of the State Records Commission is first obtained.

Section 17 of the State Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.20) provides in pertinent part:

"Regardless of other authorization to the contrary, no record shall be disposed of by any agency of the State, unless approval of the State Records Commission is first obtained. The Commission shall issue regulations, not inconsistent with this Act, which shall be binding on all agencies. Such regulations shall establish procedures for compiling and submitting to the Commission lists and schedules of records proposed for disposal; procedures for the physical destruction or other disposition of records

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proposed for disposal; and standards for the reproduction of records by photography or micro-photographic processes with the view to the disposal of the original records. * * *

Section 2 of the State Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.20) defines the term "records" 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. * * *

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(Emphasis added.)

The records in question fall within the definition of "records" in the State Records Act. Prior to the Tsoumas decision, the Director had a duty to collect the records pursuant to the provisions of the Financial Institutions Disclosure Act; it then being an operative fact. (See, Reich v. Board of Fire and Police Commissioners (1973), 13 Ill. App. 3d 1031, 1035.) The Tsoumas decision did not alter the fact that the Director collected the records pursuant to State law. Because the records were collected pursuant to State law, they qualify as "records" under the State Records Act.

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The records, therefore, must be disposed of according to the provisions of the State Records Act. Section 17 of that Act requires the Director of the Department of Financial Institutions to obtain the approval of the State Records Commission before disposing of the records; section 17 also requires the Director to follow the procedure for disposing of records which has been established by the Commission's regulations.

Very truly yours,

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