

## **Office of Government Ethics**

**94 x 4 -- 01/13/94**

### **Letter to a Member of Congress dated January 13, 1994**

Your memorandum of December 14, 1993, to the Office of Personnel Management concerning the executive branch confidential financial disclosure system was forwarded to this Office for response. The inquiry related a Federal employee's complaint that his or her agency was requiring a supervisor to review confidential financial report forms and to indicate potential conflicts on a review sheet. The employee suggested that reviews should be accomplished outside the agency, in order to protect privacy and to avoid misuse of disclosed information, with a supervisor's input only about the filer's Government duties. The employee also observed that a supervisor's review would not prevent filers from omitting information related to inappropriate activity.

The Ethics Reform Act of 1989 authorized creation of a confidential disclosure system at 5 U.S.C. appendix § 107(a)(1), and section 201(d) of Executive Order 12674 directed its establishment as a uniform system for the executive branch. The Executive Order mandate was implemented on April 7, 1992, at subpart I of 5 C.F.R. part 2634, which became effective in October 1992. Consistent with the previous confidential disclosure system which had existed under Executive Order 11222 from 1965 to 1992, the new regulation requires that a review of financial disclosure report forms be conducted within the employee's agency so that ethics officials can help employees avoid conflicts of interest. To assist the agency ethics staff with their review, 5 C.F.R. § 2634.605 allows them to request an intermediate review by the filer's supervisor.

An intermediate review is particularly useful for large or geographically diverse agencies with numerous filers, but even smaller agencies have found that the supervisor is in the best position to consider potential conflicts between an employee's financial interests and work responsibilities. Additionally, the supervisor has a need to know employees' financial interests so that they will not be assigned work which could create potential conflicts. The supervisor's review sheet and instructions which your constituent provided from his or her agency appears to be a sound method of meeting these needs.

We share employees' concerns about privacy. Any financial disclosure system must involve a careful weighing of the competing factors of privacy versus conflict prevention. We recognize the intrusive nature of a system which collects personal financial information, but we believe the new

confidential disclosure system strikes the right balance overall. Of course, reviewers must be reminded that all information revealed under the confidential financial disclosure system is strictly protected by executive branch principles of confidentiality in the Ethics Reform Act of 1989, Executive Order 12674 and the Federal Privacy Act. See 5 C.F.R. §§ 2634.604(b) and 2634.901(d).

The Privacy Act system of records under which confidential financial disclosure reports are maintained requires safeguards such as holding reports in locked file cabinets. See 55 Fed. Reg. 6327, at 6330 (Feb. 22, 1990) (OGE/GOVT-2). We have also suggested to agencies that they pass these reports between offices in sealed envelopes. Additionally, agencies have a responsibility to educate all reviewers, including supervisors, about the requirement to protect personal financial information and to use it only for the purposes intended. Your constituent's agency's review guidance sheet provides an appropriate warning in that regard. It reminds supervisors not to use the information in making decisions such as promotions, awards, training, or overtime assignments, and it cautions them against making copies of reports or disclosing information from those reports even to their secretaries. The Privacy Act contains both civil and criminal penalties for certain types of violations, and we would encourage employees to contact their inspector general's office if they are aware of any specific instances of violations.

As your constituent notes, employees would not likely disclose information on their report form about inappropriate activity, and review by supervisors will not eliminate that shortcoming. However, the confidential disclosure system is designed primarily to assist honest employees in their efforts to avoid ethical violations, by allowing supervisors and ethics officials to fashion appropriate preventive measures. No system can be perfect, but that should not deter us from carrying out the wishes of Congress and the President in implementing a system of confidential financial disclosure.

As you requested, we are enclosing your correspondence which inquired about this matter.

Sincerely,

Stephen D. Potts  
Director