

## **Office of Government Ethics**

**79 x 2 -- 07/12/79**

### **Letter to a DAEO dated July 12, 1979**

This responds to your letter of June 19, 1979, which enclosed the request of [an employee in your agency] for an additional extension for the filing of the financial disclosure report required by the Ethics in Government Act ("the Act") and posed a number of inquiries.

Although the principal reservation raised by [the employee] is that the Act constitutes an overly broad intrusion into "the marital relationship and other . . . privacy interests," his inquiries do not appear to be related directly to the aspect of spousal reporting. I would note that the Form 278 does not require reporting of the amount earned by a spouse, but only the source of the spouse's earned income. With respect to a spouse's assets, they are certainly relevant to assessing possible conflicts of interest because they cannot be discounted as a potential influence on an employee's actions. The general requirement of public disclosure of holdings rests on the reasonable premise that the public has a right to determine that decisions made by high-ranking Federal employees are not influenced by concerns ulterior to the public interest.

First, do the public access provisions of section 206(b) apply both to the financial reporting and to "any and all 'additional information'" that may be disclosed to the designated agency ethics official pursuant to section 206(b)(2)(B)? Additional information is that, pursuant to section 206(b)(2)(A), which is "required to be submitted" to supplement and explain information which is required by law to be reported on Form 278. This type of information should be added to such a form and disclosed whether or not the financial report is approved or disapproved. Any such additional information which is included would also be available to the public. But other information supplied would not generally be revealed by this Office pursuant to the Act. We see the benefit in permitting employees to discuss problems without the consequence of automatic disclosure under the Act. If a request were made for such other information under the Freedom of Information Act, we would make a determination and seek authoritative advice as to whether or not particular information must be disclosed.

Second, do the limitations on use in section 205(c)(2) apply to the preparation of a mailing list? This depends on whether or not the mailing list is being used for a prohibited purpose such as commercial activity or solicitation of money. If, on the other hand, someone were to use the disclosure to establish a mailing list for the dissemination of a policy position statement, it would not be prohibited.

Third, would the limitations on use of reports in section 205(c)(1) be applicable to persons who obtained a copy of a report or information in it from a third party who had obtained it from the agency? We believe that it would be unlawful for a person to obtain a report, even on a second-hand basis, for a prohibited purpose. The statute makes it unlawful "to obtain, or use a report" for a prohibited purpose. A more difficult question would arise when the information comes to a person in such a way that it does not appear to be directly connected with such a report, and the person thereafter makes commercial use of it.

Fourth, is the agency required to notify an individual about requests for his report, to provide such individual access to "such information as the agency has about the requestor" or to maintain records for any period of time identifying a requestor to access a particular report? An agency is not required to notify a reporting individual about requests for access. However, the statute as amended by H.R. 2805 (which was signed into law on June 13, 1979) provides that a person requesting a report must provide certain information and that his application "shall be made available to the public throughout the period during which the report is made available to the public." That period is six years. A reporting individual does have access to applications for his own report, as do other members of the public.

Finally, [the individual] may have until July 31, 1979, within which to file his financial report.

Sincerely yours,

Bernhardt K. Wruble  
Director