



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-7

Confidential Information Defined for Purposes of the Code of Ethics for Public Officials

The Code of Ethics for Public Officials, Connecticut General Statutes, Chapter 10, Part I, prohibits the use of confidential information for financial gain. See, Conn. Gen. Stat. §§1-84(b), 1-84(c), 1-84a. Senator Steven Spellman has asked for a definition of the term "confidential information" and whether the definition is consistent with the Freedom of Information Act (FOIA).

The Code of Ethics does not define the term confidential information. However, through its advisory opinions, the Commission has ruled that confidential information is any information not generally available or released to the public. See, e.g., Ethics Commission Advisory Opinion Nos. 87-2, 48 Conn. L.J. No. 40, p. 21B (March 31, 1987); 82-8, 44 Conn. L.J. No. 21, p. 3B-4B (November 23, 1982); "In the Matter of a Request for a Declaratory Ruling, Arlene Weimer, Applicant", June 2, 1983.

The categories of information which must be made available to the public are described in the FOIA Conn. Gen. Stat. §§1-15, 1-18a, 1-19 to 1-19b, inclusive and 1-21 to 1-21k, inclusive. In general, all records must be made public unless otherwise prohibited by federal law or state statute. FOIA also defines the categories of information a public agency may choose not to disclose. Id. For example, disclosure is not required of personnel or medical files the disclosure of which would constitute an invasion of personal privacy, arrest records of a juvenile, the identity of informants, records pertaining to strategy and negotiations with respect to pending claims and litigation, and the contents of real estate appraisals and evaluations made for or by an agency relative to

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the acquisition of property until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned. Conn. Gen. Stat. §1-19(b). Therefore, information may be mandatorily nondisclosable under federal or state law or permissibly nondisclosable by agency designation pursuant to FOIA. For purposes of the Code of Ethics, reference must be made to both federal law and state statute, including the FOIA, to determine the category or type of information which is not generally available or released to the public and, therefore, confidential.

It should be noted that the FOIA specifically applies only to recorded data or information. See Conn. Gen. Stat. §§1-18, 1-18a(d). However, for purposes of the Code of Ethics, confidential information must also include orally transmitted information (for example, negotiations, conversations). Otherwise, a public official or state employee could avoid the requirements of the Code by choosing not to reduce important data and information to writing. See Lt. Douglas Hannahan, Ethics Commission Docket Number 85-1 (1985) (Commission rejected Respondent's position that information he obtained through police interviews of rape victims was not confidential because summaries of the interviews were never reduced to writing). Therefore, the categories or types of information which a public agency is prohibited from disclosing or may choose not to disclose are confidential under the Code of Ethics whether or not they are recorded.

There may come a point in time when information, once confidential, becomes subject to public access. At this point, a public official or state employee may be faced with an opportunity to obtain a competitive advantage in a financial transaction since the individual will know precisely when and what information will become public. For example, the State may be interested in purchasing a piece of property. As soon as the State declines to enter into the transaction, the information relating to the purchase is no longer confidential. A state employee could then immediately contact the seller in order to negotiate a favorable agreement. The use of this type of inside information is also prohibited under §1-84(c) of the Code. See Robert W. Plage, Ethics Commission Docket No. 89-6 (1989) (State employee used previously confidential information to purchase real estate offered to the University of Connecticut). The Commission intends, through its regulatory authority, to recommend an adequate time period

a public official or state employee must wait in order to allow the public to have equal access to previously confidential information to avoid any unfair advantage a public official or state employee may enjoy by virtue of his position.

By order of the Commission,



William A. Elrick
Chairperson

Dated 2-5-90

