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Public Availability of Appraisal Reports

You have asked by memo of February 18 if you are required to make available for public inspection and copying, private appraisal reports obtained by your Bureau in connection with proposed land acquisitions. We believe that such private appraisal reports are public records which you must make available for inspection and copying pursuant to 1 M.R.S.A. § 405.

Discussion

Title 1, § 405, Maine Revised Statutes requires that all public records be made available for inspection and copying, "except as otherwise specifically provided by statute." Thus, if appraisal reports are public records they must be made available pursuant to this section unless specifically excepted. Within the statutes themselves there is the implication that such reports are public records. Section 63 of Title 23 provides a specific exemption from public disclosure for appraisal reports and other documents developed in connection with State Highway acquisitions. As both statutes were enacted in 1959 (Chapter 219 and Chapter 223, 1959 Public Laws), the implication is clear that the legislature recognized appraisal reports were included in § 405 of Title 1 and specifically exempted those appraisal reports of the Highway Department, but not of other departments, by § 63 of Title 23.

Further, though authorities differ, more recent authority indicates that such reports should be made available under right to know statutes in that (a) they are factual material, not policy memoranda, (b) they would be discoverable in a court action and (c) they are key to the decision making process and thus should be available for public debate; (Gannet Company Inc. v. Goldtrap, 302 So. 2d 174 (Fla. 1974), Tennesean Newspapers Inc. v. Federal Housing Administration, 341 F.Supp. 1013 (M.D. Tenn. 1971), broadened, 464 F.2d 657 (CA6. 1972); General Services Administration v. Benson, 415 F.2d 878 (CA9 1969)). There are contrary authorities relating to privately prepared appraisal reports where disclosure has been refused on the theory that such reports were not public records in that either they did not represent official State Acts or they were preliminary documents which had not yet been acted upon by a state agency (C.F. Curran v. Board of Park Commissioners, 259 N.E. 2d 757

(Ohio 1970); Linder v. Eckard, 152 N.W.2d 833 (Ia 1967); see also People ex rel Hamner v. Board of Education of School District #109, 264 N.E. 2d 420 (Ill. 1970) (this case relating to availability of preliminary title search reports)). However, these cases appear to represent an older view of government openness which is increasingly rejected.

The theory more generally adopted today is embodied in a statement of the Oregon Supreme Court in MacEwan v. Holm, 359 P.2d 413 (Ore. 1961) a detailed and widely cited opinion on availability of public records (data from a preliminary radiation health effects study.)

> "For the purpose of deciding whether a writing is subject to public inspection, we regard all data gathered by the agency in the course of carrying out its duties, irrespective of its tentative or preliminary character, as falling within the definition of "records or files." The need for data to serve the purposes we have mentioned above may be just as great when the data are in a raw or tentative state as when they are fully digested and memoralized by some ultimate official action." (MacEwan, supra. 420)

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