

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 24, 1976

To R. Doyle

Dept. State Geologist

From David T. Flanagan, Assistant

Dept. Attorney General

Subject COST test hole information

You have posed the question: may the State Geologist, acting as agent for the other New England State Geologists, accept OCS test hole data to be held privileged and confidential until it is released by the Federal Government and/or the Sun Oil Company? The question arises in the context of 1 M.R.S.A. 402-A enacted by P.L. 1975, c. 623 §1.

The answer is that you may receive and keep confidential such information.

Discussion

The revised definition of public records expresses a clear Legislative intent that all records, from whatever source, maintained by the Bureau except those specified in three exceptions should be made public. In view of the clear expression of public policy, all records should be available to the public unless there is a clear and compelling reason for their confidentiality.

This general interpretation favoring disclosure, should, however, be read in the light of Rule 508 of the Maine Rules of Evidence which became effective February 2, 1976.

These rules provide for a privilege against discovery of information kept confidential by the U.S. government.

Pursuant to Proposed Rules, 30 CFR 17762, Part 251, section 251.15, appearing in Fed. Reg. Vol. 40, No. 78, (22 Apr. 1975), the U.S. government would authorize its permittees drilling deep stratigraphic test wells to withhold from the public "geological and geophysical data, including processed information relating to submerged lands on the OCS collected pursuant to a permit. . . for 5 years after the date of completion of a test well or 60 calendar days after the issuance of the first Federal lease within 50 geographic miles of the drill site, whichever is earliest. . ." Under these same proposed rules, section 251.14, this same information is to be turned over to the Director of the Geological Survey, U.S. Department of the Interior within 30 days after completion of drilling operations.

Since this data will be available to the U.S. government and by Federal regulations unavailable to the public, it qualifies on its face as information kept confidential by the U.S. government.

The second exception to the public documents definition contained in §402-A excepts: "Records that would be within the scope of a privilege against discovery or use as evidence as recognized by the courts of this State in civil or criminal trials, if the records or inspections thereof were sought in the course of a court proceeding."

An opinion of this Department dated September 10, 1975 construed the last phrase to apply to "all materials, which if they were involved in a court proceeding, would be privileged against discovery." Any other interpretation, as that opinion observed, would defeat the clear intent of the Legislature to allow protection of non-discoverable materials since a plaintiff would be able to discover his evidence simply by making a demand for the material prior to filing suit.

Consequently, you may withhold this information as it falls within the exception created by the Legislature in 1 M.R.S.A. 402-A(2) for records privileged against discovery in court proceedings.



David T. Flanagan
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Natural Resources Division

DTF/cmb