

MAINE STATE LEGISLATURE

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May 19, 1977

Honorable Richard A. Spencer
House of Representatives
State House
Augusta, Maine

Dear Representative Spencer:

We are responding to your request for an opinion of this office on the following question:

"What is the scope of applicability of the Freedom of Access Law to files of the Maine Guarantee Authority?"

The answer to your question is that the Freedom of Access Law (1 M.R.S.A. §§ 401, et seq.) does not apply to files of the Maine Guarantee Authority (M.G.A.). The MGA is described by statute as a "public instrumentality of the State" and its actions are "the performance of essential governmental functions." 10 M.R.S.A. § 751. Therefore, its files would be among that material defined as "public records" in 1 M.R.S.A. § 402, sub-§ 3, unless these files come within one of the exceptions stated in that subsection. Among those exceptions are "Records that have been designated confidential by statute."

The confidentiality of the files of the MGA has been the subject of both legislation and litigation. Title 10 M.R.S.A. § 852 states the general rule that the records and files of the MGA shall be privileged and confidential. Therefore, they are specifically excluded from the definition of "public records" and would not be available for public inspection under the provisions of 1 M.R.S.A. § 408.


It should be noted that 10 M.R.S.A. § 852, after stating the general rule, continues by specifying that the rule will not prohibit disclosure of information from the records or files to a special

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interim legislative investigating committee. In addition, it has been held that this statutory confidentiality will not prevent access to these records and files upon order of the Court. Maine Sugar Industries, Inc. v. Maine Industrial Building Authority, 264 A.2d 1 (Me., 1970). Since these exceptions to the general statutory confidentiality of the records and files are specific and limited, they would not bring these materials within the purview of the Freedom of Access Law.

Please continue to call on us whenever we may be of assistance.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General

SKS:mfe

cc: Philip G. Clifford, II,
Manager MGA