WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1484

PUBLIC RECORDS AND INFORMATION:
Confidentiality of Personnel
Records of Public Officers
and Employees

Honorable Dennis P. Ryan
State's Attorney
County of Lake
County Building
Waukegan, Illinois 60065

COPY

Dear Mr. Ryan:

I have your letter in which you ask whether the Lake County Deputy Sheriff's Merit Commission is required to make available for inspection and copying by the news media background investigation, psychological and polygraph reports of candidates for certification for appointment as deputy sheriffs by the Commission. You advise that, pursuant to its authority under section 58.1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1977, ch. 34, par. 359.1), the Lake County Deputy Sheriff's Com-

mission has adopted the following rule:

> "The files of the Commission relating to all personnel matters of the Sheriff's Office shall be confidential, except that any person shall be permitted on request to examine his graded, written examination and his efficiency report."

The requested reports are, as you point out in your letter, "public records" within the meaning of section 43.103 of the Local Records Act (Ill. Rev. Stat. 1977, ch. 116, par. 43.103), which states in pertinent part:

> " * * *
>
> 'Public record' means any book, paper, map, photograph, or other official documentary material, regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein. * * * "

It does not follow, however, that they are open to inspection.

Section 3a of the Act states:

> "Reports and records of the obligation, receipt and use of public funds of the units of local government and school districts are public records available for inspection by the public. These records shall be kept at the official place of business of each unit of local government and school district or at a designated place of business of the unit or district. These records

> shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The person in charge of such records may require a notice in writing to be submitted 24 hours prior to inspection and may require that such notice specify which records are to be inspected. Nothing in this section shall require units of local government and school districts to invade or assist in the invasion of any person's right to privacy."

The above section provides only for the inspection of public records of a financial nature and therefore does not cover the information sought here. In order to obtain information that is neither specifically accessible nor specifically inaccessible, one must look to the common law right to inspect public records (1976 Ill. Att'y Gen. Op. 356). This right was recognized by the court in People ex rel. Gibson v. Peller (1962), 34 Ill. App. 2d 372, where the court stated at pages 374-75:

> " * * *
>
> The right of relators to reproduce the public records is not solely dependent upon statutory authority. There exists at common law the right to reproduce, copy and photograph public records as an incident to the common law right to inspect and use public records. Good public policy requires liberality in the right to examine public records. In 76 CJS, Records, p. 133, the author states: 'The right of access to, and inspection of, public records is not entirely a matter of statute. The right exists at common law, and

> in the absence of a controlling statute, such right is still governed by the common law . . . all authorities are agreed that at common law a person may inspect public records . . . . or make copies or memoranda thereof.' * * * *"

Although it is to be liberally construed (Weinstein v. Rosenbloom (1965), 59 Ill. 2d 475, 482), the right to inspect public records is not without qualification. There may be interests that justify withholding public records from public inspection. The court in People ex rel. Better Broadcasting Council, Inc. v. Keane (1973), 17 Ill. App. 3d 1090, explained that interests such as confidentiality, privacy and the need to protect sources of information may qualify the public's right to know. The court stated at pages 1092-93:

" * * *

> The people's right to know, however, must be balanced by the practical necessities of governing. Public officials must be able to gather a maximum of information and discharge their official duties without infringing on rights of privacy. Certain information possessed by government is often supplied by individuals and enterprises that have no strict legal obligation to report but do so on a voluntary basis, with the understanding the information will be treated as confidential. Therefore, it is important to consider whether disclosure would constitute an invasion of privacy; whether there could be prejudice to private rights or give an unfair competitive advantage; whether it would prevent responsible business people from serving the public; whether

> it would discourage frankness; and whether it could cut off sources of information upon which a government relies.
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> * * *

"

In Wisher v. News-Press Publishing Co. (Fla. App. 1975) 310 So. 2d 345, the court, relying on the same interests of confidentiality, privacy and protection of sources of information expressed in People ex rel. Better Broadcasting Council, Inc., refused to open the personnel files of county government employees to public inspection by a news organization. As the court stated at page 348:

> "It is common knowledge that governmental agencies often seek information concerning prospective employees from their former employers and others having knowledge of their character. This information is supplied upon the understanding that it will be kept confidential. Should it become known that the information cannot be held inviolate, one could hardly expect further information to be forthcoming.
>
> Almost universally, a private employer assumes the obligation of treating personnel information on a confidential basis. If government cannot assure its employees of similar protection, then the public will be prejudiced by the inability of its agencies to attract qualified personnel.
>
> The personnel files of government employees necessarily contain personal information, much of which would be considered hearsay in a court of law. Such private matters as health records and psychological profiles may be a part of an employee's personnel file. The file may also reflect indiscretions of long years past. Even if

> the employee has become fully rehabilitated, the unwarranted disclosure of this information could cause immeasurable harm to him as well as to others.
>
> * * *
>
> The public records act is directed to the laudable objective of assuring that the people have the means of knowing what their government is doing. Yet, the right to know must occasionally be circumscribed when the potential damages far outweigh the possible benefits. In our opinion, to require public disclosure of the personnel files of governmental employees could result in irreparable harm to the public interest and would be against the public policy."

The result reached in Wisher is clearly consistent with Illinois law as expressed in People ex rel. Better Broadcasting Inc. Furthermore, it is in accord with the public policy of our State as reflected in both "AN ACT in relation to meetings" (Ill. Rev. Stat. 1977, ch. 102, par. 41 et seq.), which specifically authorizes public bodies to hold closed meetings to consider information regarding appointment, employment or dismissal of an employee or officer, and section 3a of the Local Records Act, which provides in pertinent part:

> "* * * Nothing in this section shall require units of local government and school districts to invade or assist in the invasion of any person's right to privacy."

Finally, the right of the news media to inspect public records is the same as that of the general public.

In Branzburg v. Hayes (1971), 408 U.S. 665, 684, 92 S. Ct. 2646, 2658, 33 L. Ed. 2d 626, the United States Supreme Court stated:

> "The First Amendment does not guarantee the press a constitutional right of access to information not available to the public generally."

This principle has been reaffirmed by the Supreme Court in several subsequent cases, the most recent of which is Houchins v. KQED (1978), 438 U.S. 1, 98 S. Ct. 2588, 57 L. Ed. 2d 553. There, the court reviewed its prior "media access" cases and held that, while the media are free to communicate information once it is obtained, neither the first amendment nor the fourteenth amendment mandates a right of access to government information or sources of information within the government's control.

It is therefore my opinion that a Deputy Sheriff's Merit Commission is not required to make available to the news media or the general public confidential information contained in the Commission's personnel files.

Very truly yours,

ATTORNEY GENERAL