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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

August 19, 1983

FILE NO. 83-011

STATE MATTERS:
Disclosure of Confidential
Information to the Auditor
General

Michael P. Lane, Director
Illinois Department of Corrections
160 North LaSalle
Chicago, Illinois 60601

Dear Mr. Lane:

I have your letter wherein you ask whether certain information in the possession of the Department of Corrections must be made available to the Office of the Auditor General. You advise that, pursuant to its financial and compliance audit of the East Moline Correctional Center, the Auditor General's office has requested certain information submitted to the Department as a result of investigations by Department personnel into alleged improprieties at the Center. Specifically,

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the Auditor General has requested copies of (1) a letter report and attached documentation of the Internal Operations and Program Audit investigation into whether physical security at the Center met prescribed correctional standards; (2) a letter report and attached documentation of the Internal Investigation personnel regarding alleged improprieties in hiring procedures that could have resulted in the hiring of unqualified people at the Center; and (3) Department rules and regulations on the screening and testing of correctional officer applicants. In his letter to the Department, the Auditor General states that the requested information will be used only for audit purposes. For reasons hereafter stated, it is my opinion that the information in question must be made available to the Auditor General.

The Auditor General is obligated to conduct a financial audit of each State agency at least once during every biennium, except as is otherwise provided in regulations adopted pursuant to the Act. (Ill. Rev. Stat. 1982 Supp., ch. 15, par. 303-2.) Section 3-12 of the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15, par. 303-12) provides, in pertinent part:

"* * * All State agencies and their officers and employees shall promptly comply with, and aid and assist the Auditor General in the exercise of his powers and duties under this Act and the regulations adopted pursuant to this Act.

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At the request of the Auditor General, each State agency shall, without delay, make available to the Auditor General or his designated representative any record or information requested and shall provide for examination or copying all records, accounts, papers, reports, vouchers, correspondence, books and other documentation in the custody of that agency, including information stored in electronic data processing systems, which is related to or within the scope of any audit or investigation under this Act.

* * *

"

(Emphasis added.)

This language is plain and unambiguous. In such cases, it is well established that there is no need to resort to extrinsic aids of statutory construction; the plain meaning of the statute must be given effect. (People ex rel. Cruz v. Fitzgerald (1977), 66 Ill. 2d 546, 551.) Section 3-12 requires full and prompt cooperation from each State agency in the exercise of the Auditor General's powers under the Act; expressly included within this mandate is the duty to make available "any information" requested by the Auditor General which is related to or within the scope of any audit under the Act. Although it appears that the requested information is related primarily to matters within the scope of a management or program audit (see Ill. Rev. Stat. 1981, ch. 15, pars. 301-14, 301-15), the Auditor General is authorized to inquire into and report upon such matters in the conduct of a financial audit, provided that the inquiry is limited to matters arising during the ordinary course of the financial audit. (Ill. Rev. Stat. 1982 Supp., ch. 15, par. 303-2.)

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You assert that disclosure of the requested information would violate the confidentiality interests required to be protected under the Unified Code of Corrections. Section 3-5-1 of the Code (Ill. Rev. Stat. 1981, ch. 38, par. 1003-5-1) provides in pertinent part:

"Master Record File. (a) The Department shall maintain a master record file on each person committed to it, which shall contain the following information:

- (1) all information from the committing court;
- (2) reception summary;
- (3) evaluation and assignment reports and recommendations;
- (4) reports as to program assignment and progress;
- (5) reports of disciplinary infractions and disposition;
- (6) any parole plan;
- (7) any parole reports;
- (8) the date and circumstances of final discharge; and any other pertinent data concerning the person's background, conduct, associations and family relationships as may be required by the Department. A current summary index shall be maintained on each file.

(b) All files shall be confidential and access shall be limited to authorized personnel of the Department. Personnel of other correctional, welfare or law enforcement agencies may have access to files under rules and regulations of the Department. The Department shall keep a record of all outside personnel who have access

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to files, the files reviewed, any file material
copied, and the purpose of access. * * *

* * *

"

(Emphasis added.)

To the extent that internal agency investigation reports or
agency regulations are not maintained in inmates' master record
files, it would appear that such information is not subject to
the confidentiality requirement contained in section 3-5-1.

(See Dykes v. Morris (N.D.Ill. 1980), 85 F.R.D. 373, 376-77.)

Therefore, it appears that the information at issue is not made
confidential by section 3-5-1 of the Code.

Nevertheless, assuming arguendo that the requested
information is made confidential by the Unified Code of
Corrections, the Department would still be required to make the
information available to the Auditor General. Section 6-1 of
the Illinois State Auditing Act (Ill. Rev. Stat. 1981, ch. 15,
par. 306-1) provides in pertinent part:

"

* * *

Where records or information are classified
as confidential, by or pursuant to law, such
records or information shall be disclosed to the
Office of the Auditor General as necessary and to
the extent required for the performance of an
authorized post audit. However, only a payroll
employee of the Office of the Auditor General,
specifically designated in writing by the Auditor
General, may receive confidential income tax
records.

Confidential records or information
disclosed to the Office of the Auditor General

shall be subject to the same legal confidentiality and protective restrictions in the Office of the Auditor General as such records and information have in the hands of the official authorized custodian. Any penalties applicable to the officially authorized custodian or his employees for the violation of any confidentiality or protective restrictions applicable to such records or information shall also apply to the officers, employees and agents of the Office of the Auditor General.

The Office of the Auditor General may not publish any confidential information or records in any report, including data and statistics, if such information as published is directly or indirectly matchable to any individuals.

Inside the Office of the Auditor General, confidential records or information may be used only for official purposes.

Any officer, employee, or agent of the Office of the Auditor General who violates any legal confidentiality or protective restriction governing any records or information shall be guilty of a Class A misdemeanor unless a greater penalty is otherwise provided by law.

Where this Act expressly governs or grants authority for regulations to govern other auditing procedures, this Act supersedes all other statutes to the contrary. To the extent that this Act conflicts with another statute, this Act prevails.

Except as provided in this Section, this Act does not supersede or repeal by implication any other statute." (Emphasis added.)

Section 6-1 unequivocally requires disclosure of confidential information to the Auditor General, as necessary and to the extent required for the performance of an authorized post audit. A post audit is a financial or compliance audit.

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(Ill. Rev. Stat. 1981, ch. 15, pars. 301-12, 301-13.) The confidentiality interests at stake are accommodated by the restrictions placed upon the use the Auditor General may make of such information and the penalties prescribed for the violation of those restrictions.

It is clear that the General Assembly contemplated a situation, such as the instant one, where conflicting interests arise in the course of performance of the Auditor General's duties under the Act. The General Assembly has determined and expressly stated that the provisions of the Illinois State Auditing Act shall prevail in such cases. Furthermore, the provisions of the Unified Code of Corrections are not intended to impair, alter, modify or repeal any powers of any other State department or officer. (Ill. Rev. Stat. 1981, ch. 38, par. 1008-1-2.) Consequently, the security and confidentiality interests asserted by the Department must yield to a proper request of the Auditor General.

This conclusion is in accordance with the legislative intent behind the Illinois State Auditing Act. Firstly, it is noteworthy that the source of the Auditor General's powers and duties are found in the constitution itself. Section 3 of article 8 of the Illinois Constitution of 1970 provides:

"(a) The General Assembly shall provide by law for the audit of the obligation, receipt and use of public funds of the State. The General Assembly, by a vote of three-fifths of the

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members elected to each house, shall appoint an Auditor General and may remove him for cause by a similar vote. The Auditor General shall serve for a term of ten years. * * *

(b) The Auditor General shall conduct the audit of public funds of the State. He shall make additional reports and investigations as directed by the General Assembly. He shall report his findings and recommendations to the General Assembly * * *."

The Illinois State Auditing Act was enacted pursuant to this constitutional mandate. (Ill. Rev. Stat. 1981, ch. 15, par. 301-2(a).) Subsection 1-2(b) of the Act (Ill. Rev. Stat. 1981, ch. 15, par. 301-2(b)) provides:

"This Act is intended to provide a comprehensive and thorough post audit of the obligation, expenditure, receipt and use of public funds of the State under the direction and control of the Auditor General, to the end that the government of the State of Illinois will be accountable to the General Assembly and the citizens and taxpayers, and to the end that the constitutional and statutory requirements governing state fiscal and financial operations will be enforced." (Emphasis added.)

Furthermore, in addition to requiring each State agency to promptly comply with all requests of the Auditor General for information and records in the custody of the agency, section 3-12 of the Act also provides, in pertinent part:

* * *

The Auditor General shall report to the Legislative Audit Commission, the Speaker of the House of Representatives and the President of the Senate each instance in which a State agency fails to cooperate promptly and fully with his office as required by this Section.

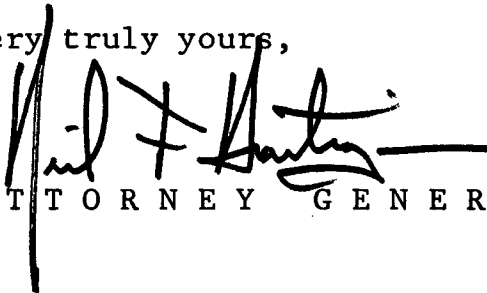
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The Auditor General may institute and maintain any action or proceeding at law or in equity to secure compliance with this Act and the regulations adopted hereunder."

These provisions make clear the legislature's intent to provide the Auditor General with the authority to obtain information from other State agencies and departments, notwithstanding the assertion of other compelling interests which may be affected by disclosure of the requested information.

For these reasons, it is my opinion that the Department is required to make available the information requested by the Auditor General.

Very truly yours,



A T T O R N E Y G E N E R A L