

STATE OF FLORIDA
DEPARTMENT OF BANKING AND FINANCE
DIVISION OF BANKING

In RE:

DISCLOSURE OF DEPOSIT ACCOUNT)
INFORMATION BY FINANCIAL)
INSTITUTIONS FOR COMMERCIAL)
AND CREDIT PURPOSES.)
_____)

89-2 OGA
Administrative Proceeding
No.: 2710-B-11/89
Docketed – 11/20/89

ORDER OF GENERAL APPLICATION

In the exercise of the power and authority vested in the Department of Banking and Finance (hereinafter Department) , pursuant to Section 655.012 (3) , Florida Statutes (1987) , it is hereby found and ordered:

FINDINGS OF FACT

1. The Department is authorized by Section 655.012(3), Florida Statutes to issue an order of general application.
2. The recent enactment of §655.059, Florida Statutes, (as created by 1989 Florida Laws, Chapter 89-229) has caused industry concerns regarding the applicability of the confidentiality provisions thereof to certain particular commercial circumstances set forth hereafter which renders it appropriate for the Department to exercise its authority to address these industry concerns by the issuance of an order of general application.
3. Typically, financial institutions encounter questions regarding the disclosure of account information in certain limited commercial circumstances set forth below:
 - (a) where merchants, commercial establishments, individuals or financial institutions, which have been given a check to pay for merchandise or services or to exchange for cash or its equivalent, inquire as to whether the account contains sufficient funds to cover the draft;
 - (b) When checks drawn on accounts held by a financial institution are deposited in other financial institutions and the depositors wish to draw against those

funds immediately and a financial institution is then asked to provide information to the other financial institution as to whether the draft is covered by funds on deposit with the financial institution;

(c) Where patterns of deposits and drafts suggest check-kiting or some other type of fraud, a financial institution has, in the past, customarily contacted other financial institutions to determine whether the deposited items are drawn on uncollected funds or to alert the other financial institution to the possibility of fraudulent activity in the account;

(d) When a financial institution has received a charge-back item from another institution, a financial institution will typically contact that institution to determine whether the account has sufficient funds to cover the item before sending the item through again;

(e) When a financial institution has suffered a loss due to fraudulent deposit account activity or if the account is handled in an unsatisfactory manner (excessive overdrafts, etc.), a financial institution has, in the past, reported that loss to a central bureau of which other financial institutions are members. One of the functions of that central bureau is to act as a clearing house for information by which a financial institution may determine whether a new or potential customer has a history of fraudulent or irresponsible banking activity in order to protect itself; and

(f) Where a financial institution from time to time receives credit reference inquiries concerning its depositors' financial histories arising out of commercial undertakings and issues. Responses to such inquiries are a necessary and prudent part of the business of banking and inure to the depositors' benefit, over all. Codes of ethics and guidelines for responding to such inquiries have been promulgated and are widely followed within the industry.

4. Each of the situations delineated in paragraphs 3(a) through (f), supra, is a common and ordinary occurrence within the industry and has heretofore been handled within a financial institution's course of commercial dealing.

5. In each of these commercial settings, the financial institution is asked to release information which would appear to be confidential pursuant to Florida Statutes Section 655.059(2) , as created by 1989 Florida Laws, Chapter 89-229.

CONCLUSIONS OF LAW

6. 1989 Florida Laws, Chapter 89-229 has created Section 655.059(2) , Florida Statutes, effective October 1, 1989, which provides in pertinent part:

(b) The books and records pertaining to the deposit accounts and loans of depositors, borrowers, members and stockholders of any financial institution shall be kept confidential by the financial institution and its directors, officers, and employees and shall not be released except upon express authorization of the accountholder as to his own accounts, loans, or voting rights. However, information relating to any loan made by a financial institution may be released without the borrower's authorization in a manner prescribed by the board of directors for the purpose of meeting the needs of commerce and for fair and accurate credit information....

7. Section 655.059(1), Florida Statutes, provides a general rule of confidentiality of all books and records with certain exceptions, including:

(f) As authorized by the board of directors of the financial institution.

(g) As provided in subsection (2).

8. This order of general application concerns whether the board of directors of a financial institution acting pursuant to Section 655.059(1)(f), Florida Statutes is authorized to adopt a resolution which would allow the financial institution to release the information requested concerning deposit accounts in the commercial settings set fourth in paragraphs 3(a) through (f) of the foregoing state-

ment of facts, which has historically occurred prior to the enactment of §655.059(2), Florida Statutes.

9. The Department concludes as a matter of law that the prohibition against disclosure contained in subsection (1) of the statute is a general prohibition covering all records and books of the financial institution, including records of all deposit accounts and loans. Subsection (1) authorizes disclosure of all books and records under any of seven enumerated circumstances, including authorization of the disclosure by the board of directors. The provisions of subsection (2) are included in subsection (1) as one of the circumstances which will allow disclosure.

10. While subsection (2) may be read as restricting disclosure of deposit accounts without express authorization without exception, the Department concludes as a matter of law that the proper application of subsection (2), by virtue of and being subordinated to and included within subsection (1), is as being but one of seven exceptions to the rule of non-disclosure. The inclusion of subsection (1) (f) as an exception to the general prohibition allows the board of directors to authorize disclosure and is not limited by any provision in subsection (2). Thus, the correct application of these subsections, read in pari materia, is that absent any circumstance permitting disclosure pursuant to subsections (1) (a) through (f) of the statute, financial institutions may only disclose information regarding deposit accounts if expressly authorized by the holder of the account, as set forth in subsection (2).

11. This determination is supported by the fact that a similar statute, §665.042, Florida Statutes, applicable to state chartered savings and loan associations, has been the law of Florida for twenty years. No attempt has been made to apply that statute so as to interfere with the customary and usual business practices necessary to meet the needs of commerce and for fair and accurate credit information.

12. The Department is cognizant of the need by financial institutions to maintain the confidentiality of deposit account information from the general public as delineated in §655.059(2), Florida Statutes. The Department nevertheless concludes as a matter of law that the issuance of this order of general application furthers, inter-alia, the purposes and policies of the Florida Banking Code as set forth in §658.14, Florida Statutes, such as but not limited to (1) the safe and sound conduct of the business of banks and trust companies;

(2) the prudent conservation of assets of banks and trust companies; and (3) the opportunity for banks and trust companies to serve effectively the convenience and needs of their customers and the public.

ORDER

IT IS THEREFORE ORDERED:

13. That the board of directors of a financial institution, acting pursuant to Section 655.059(1)(f), Florida Statutes, may adopt a general board resolution authorizing the financial institution:

(a) to release deposit account information to a merchant, commercial establishment, individual or financial institution which states it has received a check drawn on an account which that merchant, commercial establishment, individual or financial institution specifically identifies in payment for services or goods or in exchange for cash or its equivalent;

(b) to release deposit account information to another financial institution which indicates it has accepted for deposit a draft against an account which the requesting financial institution specifically identifies;

(c) to release deposit account information to other financial institutions when it has detected patterns of activity in specific and identified accounts which may reasonably be construed as indicative of a check-kiting

scheme or other fraudulent activity, if such release of information is reasonably believed to be necessary to the determination of whether such fraudulent activity is occurring and the institutions to which the information is released are reasonably believed to be involved in the same pattern or scheme;

(d) to release information requested by another financial institution relating to the current ability of a specific and identified account to cover a returned item which may be resubmitted for payment;

(e) to release deposit account information to a central bureau for the purpose of compiling information concerning identified depositors who have engaged in fraudulent or irresponsible activity with financial accounts where a function of the central bureau is to provide information to financial institutions for their own protection; and

(f) to provide responses to credit reference inquiries where the financial institution reasonably believes the inquiry made as to a specific and identified account is made in a commercial credit context.

14. Nothing herein shall be construed to otherwise permit the release of confidential deposit account information to the general public. This order shall be strictly construed to permit disclosure of deposit account information by appropriate board resolution only in the limited commercial settings described in paragraphs 13 (a) through (f) of this order.

Done and Ordered at Tallahassee, Leon County, Florida this 20th day of November, 1989.

GERALD LEWIS, As Comptroller
Of the State of Florida and
Head of the Department of
Banking and Finance