

How Confidential Are Your

By Joan Sweeney

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To his surprise, Richard Stark of Corte Madera, Calif., got more than just canceled checks with one of his bank statements last year.

Included with the checks was a memo dated August, 1971, with his name and account number. It read: "This memo is to authorize you to read checks to the FBI before sending statement to customer," and the words "before sending statement to customer" were underlined in red ink, according to Stark.

The red ink was matched by the red faces of bank officials who confirmed the memo was authentic and said Stark had received it inadvertently.

Stark, an artist, expressed his displeasure at having the FBI review his checks by filing a \$500 million suit against the bank March 21 in San Francisco Superior Court.

Stark's surprise may be shared by those who think their bank accounts are their private property and as privi-

leged as, say a confidence to an attorney or a physician.

They are not. The government takes the position the records belong to the bank, not the customer.

A bank is not required to show a customer's records to outsiders, including government agents, unless they have a subpoena on other legal document formally requesting them. But some banks release the records voluntarily to government investigator without such a legal demand.

For instance, in an affidavit, Robert N. Wall, who had been an FBI agent in Washington from 1967 to 1970, said bank records there often could be obtained through an agent who had developed rapport with various banks in the area.

Wall stated that these banking records were not obtained through any legal procedure (subpoena, summons or warrant), but merely as an accommodation to the FBI upon the request of a special agent.

He said the bank records of some

New Left and black causes and some individuals were obtained in this way.

Most of the largest banks in California, including United California, Crocker, Security Pacific National and Wells Fargo, say their policy is to require legal action, such as a subpoena ordering them to produce the records, before they will comply.

"We will not release records except on valid subpoena," said Harold Arthur, a Wells Fargo cashier.

However, it was the San Anselmo branch of Wells Fargo in which Stark had his account. A bank spokesman said the memo on reading Stark's checks to the FBI violated the bank's policy.

But Stark's attorney, Stephen Adams, said, "We don't really know whether it (Stark's case) was an exception."

In testimony before the Senate Banking Committee last summer, columnist Jack Anderson contended the FBI "has virtually unlimited access to private bank account records."

"Of course, the bankers tell us they

Bank Records?

would never do such a thing without the necessary legal papers—usually a subpoena," he testified. "But I can testify that many bankers informally cooperate with the FBI and I can document it."

One legal document banks routinely comply with is the Internal Revenue Service administrative summons, or so-called pocket subpoena, which the agent himself fills out and presents to the bank to obtain access to an account record.

Most banks want it to protect themselves, according to Peter Gruenberger, assistant to the chief of the IRS Audit Division in Los Angeles.

The question of how confidential a customer's bank records are became more important as a result of the Currency and Foreign Transaction Reporting Act, the so-called bank secrecy act of 1970. (Part of this act was declared unconstitutional by a San Francisco Federal Court, a decision now being appealed to the U.S. Supreme Court.)

The law was passed to help the government catch major criminals and tax

evaders, but critics worry that it gives the government access to an unwarranted amount of information on other individuals.

"If you have access to banking records, you can tell all sorts of thing about the person," said Ramona Ripston, executive director of the American Civil Liberties Union of Southern California.

Those things, of course, include the politics and causes an individual supports.

What also bothers some, including the ACLU, is that, if a subpoena or other legal demand is issued for his records, the customer himself may never be notified. Or if he is told, it may be after the records have been examined.

The ACLU wants banks to notify customers of subpoenas before they turn the records over to investigators so the customer has the opportunity to fight the order in the courts.

Banks are not happy about being caught in the middle between govern-

Are Individuals Bank Records?

SNOOP, From H1

ment investigators' demands and their customers' rights of privacy.

The ACLU agrees: "The current situation puts banks in the difficult position of having to decide whether . . . to accede to (a) government request without any way to evaluate the request and without any knowledge of what is at stake for the customer."

The ACLU advocates standards to protect the customer that "will remove this burden from the bank and will fill the gaps" in the present system.

Legislation providing such standards was introduced in Congress last year by Sens. John Tunney (D-Calif.) and Charles M. Mathias Jr. (R-Md.) but was not acted upon. Both the Justice and Treasury departments opposed it.

"You don't always want to tip off people that you are investigating them," said a Treasury spokesman. "We're not going after common, ordinary crooks. We're going after some pretty big fish—people who can afford all sorts of defensive actions."

See SNOOP, H7, Col. 6