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BODY:

The attorney general does not have to turn over documents in its investigation file to a stockbroker who was later convicted of fraud, the state's top court held yesterday. The decision reverses the Court of Special Appeals, which had held that Paul B. Gallagher was entitled to the documents he sought because they were part of an "investigatory file" and he was a "person in interest" as defined in the Public Information Act. Gallagher was one of several people who were the focus of the attorney general's investigation in 1985 and 1986 of Caucus Distributors Inc., a publishing and fund-raising organization affiliated with Lyndon LaRouche Jr. He argued that the documents were not exempt from public disclosure under state law. While the documents were not exempt under the PIA section Gallagher cited, other portions of the act did exempt them from disclosure, the Court of Appeals held. Assistant Attorney General Andrew H. Baida yesterday hailed the decision as a major Public Information Act case. "The Court of Special Appeals ruling was unprecedented and would have led to disastrous effects," Baida said. "It directly thwarted important public policy objectives that the legislature sought to advance when it provided that certain documents shall not be disclosed under the Public Information Act, period." Robert L. Lombardo, Gallagher's attorney, called the court's decision "expected but still disappointing." Gallagher was convicted in Virginia of securities fraud and securities registration offenses based in part on the investigation conducted by the Maryland attorney general's office.

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Now serving a 34-year prison sentence in Virginia, he filed for access to documents in the investigatory files in support of a petition for a writ of habeas corpus after exhausting his direct appeals. Gallagher had argued that when disclosure of an investigatory record would not produce any of the seven results enumerated in 10-618(f)(2), the record must be disclosed to a "person in interest," irrespective of all other exemptions the act specifies. The Court of Appeals disagreed. "As the language and legislative history of the Public Information Act make clear, if any exemption under other sections of the Act is applicable to a particular record, then it must be withheld," Judge John C. Eldridge wrote for the court. "Moreover, if the record is exempt under the provisions of 10-618, including 10-618(f), then it may be withheld at the discretion of the custodian. The Court of Special Appeals erred in holding that a person in interest can avoid all other exemptions under the Act simply because he is seeking disclosure of an investigatory file pursuant to 10-618(f)," Eldridge added.

WHAT THE COURT held

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