

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D. C.

October 6, 1972

Honorable Harley O. Staggers  
Chairman  
Special Subcommittee on Investigations  
Committee on Interstate and Foreign Commerce  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Staggers:

Thank you for your letter of September 28, 1972, with its review of the legal authorities directing Congressional oversight committees to review the administration of laws and authorizing them to hold hearings and require the production of records for that purpose. We fully recognize the right of Congress to review the Commission's operations and are anxious to cooperate with the Congress in any study it wishes to make.

This is illustrated by the prior examples of Commission cooperation with similar Congressional requests which your letter cites. I must, however, correct the statement that the Commission's position on this matter is unprecedented. Our basic policy was clearly set forth in the December 17, 1969 letter which former Chairman Budge sent to the Committee on Government Operations. Chairman Budge expressed the Commission's position on the availability of data from pending investigations in the following language:

"The Commission has consistently taken the position, however, and has generally persuaded interested Congressional committees that, barring exceptional circumstances, it is inappropriate for Congressional committees to be furnished nonpublic information pertaining to a pending investigation or Commission adjudication. The Commission has adopted this position (1) to maintain the appearance as well as the fact of agency impartiality in its adjudicatory functions and to avoid any impediment to its investigatory and enforcement function." The Commission's activities in this regard have been likened to those of a grand jury.

See Wooley v. United States, 97 F. 2d 258, 262 (C.A. 9, 1938); In re Securities and Exchange Commission, 84 F. 2d 316, 318 (C.A. 2, 1936).

Chairman Budge further stated:

“Any reluctance on the Commission’s part to furnish information would be dictated by the impairment of pending investigations or the probable impact disclosure would have on third parties.”

The considerations which Chairman Budge stressed are particularly vital in a matter which can attract wide publicity and speculation. As I explained to you last week, I believe it to be a misuse of our subpoena power to permit access to documents except for the enforcement purposes for which it was authorized, a failure in our obligation to avoid anything which could jeopardize an enforcement action, and an impropriety in disposing of documents, which may be used as evidence in a prosecution, in any manner which could cut off any rights a possible defendant might want to assert with respect to them in relation to any party other than the Commission.

As Commissioner Herlong and I recounted to you subsequent to the completion of our enforcement actions on insider trading, the staff recommended, and the Commission approved, that the IT&T investigation be continued to determine whether there had been an obstruction of justice. We have been regularly discussing this phase of our investigation with the Department of Justice, which, as directed by the Senate Judiciary Committee, has been also investigating possible obstruction of justice. Lawyers for IT&T and individuals involved recently questioned the propriety of requiring their clients to respond to two separate investigations, both relating to the possible obstruction of justice.

On October 4, the Justice Department asked that our files on this matter be referred to them. The Commission recognized that the Justice Department has a clear right to material bearing on a possible crime. In the final analysis, the Justice Department would have to draw the whole matter together and handle any prosecution. The Justice Department is also in the best position to handle problems relating to the rights of potential defendants and safeguarding the validity of any subsequent legal action.

Therefore, the Commission unanimously approved referring the IT&T file and investigation to the Justice Department for possible criminal prosecution. The Commission’s enforcement staff has been directed to cooperate with the Justice Department in any way the Department may find useful in discharging its obligations.

Very truly yours,

William J. Casey  
Chairman