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CORRECTED COPY
May 13, 2002

The Honorable Leo E. Green
3123 Belair Drive
Bowie, Maryland 20715

Dear Senator Green:

You have asked for advice concerning whether the State Department of Education is required to disclose the names of applicants for the Prince George's County Board of Education. It is my view that these names may not be disclosed because they are contained in applications for the position and the Public Information Act prohibits the disclosure of information in personnel files, including applications.¹

House Bill 949 (Chapter 289, Laws of Maryland 2002), dissolves the current elected Board of Education in Prince George's County and replaces it with a Board that is to be appointed by the Governor and the County Executive. Under the procedure set up by the bill, the nine voting members of the new Board are to be appointed from a list of qualified individuals submitted to the Governor and the County Executive by the State Board of Education. Education Article § 3-108.2(c)(1). This procedure is the same as the one that was used to appoint the new Board of Education in Baltimore City in 1997. Education Article § 3-108.1(c)(1). When the new Board was appointed in Baltimore City the State Board did not disclose the names of the applicants. The State Board has indicated that it intends to follow the same procedure with respect to the appointment of the new Board in Prince George's County. It is my understanding that the State Board has received over 150 applications for these positions.

The Maryland Public Information Act states that "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." State Government Article § 10-613(a). However, it further provides that "a custodian shall deny inspection of a personnel record of an individual, including an application." SG § 10-616(i)(1).

This office has determined that the personnel records provision is not limited to personnel records for employees of the State, but also applies to records related to persons who seek or hold

¹ It is also my view that the State Board could deny inspection of the names of applicants under the exception for interagency documents.

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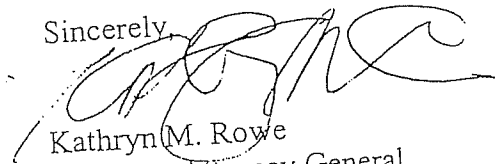
public office. In 79 *Opinions of the Attorney General* 352 (1984), Attorney General Curran concluded that the provision would prohibit disclosure of questionnaires concerning the performance of judges, noting that it does not refer to the personnel records of "an employee" but of "an individual." The opinion concluded that composite information concerning the findings of the survey could be released, but not data that identified particular judges. *See also*, Letter to the Honorable Jennie M. Forehand dated October 6, 2000. (Members of the State Forest Citizen Advisory Committee).

The next issue is whether the names of applicants for the Board are included in the matters that may not be disclosed. Such information, in order to be disclosed, would have to come from the resumes or applications submitted by those seeking the positions. As a result, it is my view that they may not be disclosed. *See*, Letter to the Honorable Jennie M. Forehand dated October 6, 2000 (applying similar reasoning to support refusal to provide biographical information concerning the members of the State Forest Citizen Advisory Committee).

It is true that no previous advice has directly addressed the issue of whether this provision would prevent the disclosure of a list of names only, with no other information except the fact that the persons on the list had applied for appointment to the Board. However, in cases where the General Assembly has wanted the names of applicants to be public, it has expressly so provided in the law. *See* Article 29, § 1-103(a)(1)(ii) (WSSC), discussed in 68 *Opinions of the Attorney General* 335 (1983). Similarly, where the release of names from other confidential files is contemplated, the General Assembly has made specific provisions for the release of this "directory" information. *See e.g.*, Health General Article § 4-302(c) (information concerning the presence and general health condition of a patient); SG § 10-616(k)(3) (student names and addresses).²

For these reasons, it is my view that the Public Information Act prohibits the disclosure of the names of the applicants for positions on the new Board of Education for Prince George's County.³

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

² In 59 *Opinions of the Attorney General* 596 (1974), Attorney General Burch seemed to assume that a State Board regulation making individual student records confidential would prevent the release of this type of information if it were not overridden by the Public Information Act.

³ The federal exception for personnel records in the Freedom of Information Act is significantly different than Maryland's, as it requires a showing that disclosure would constitute a "clearly unwarranted invasion" of privacy. However, it is relevant that the Supreme Court has interpreted the FOIA to preclude disclosure of the names and addresses of employees where that showing is made. *United States Department of Defense v. F.L.R.A.*, 510 U.S. 487 (1994).