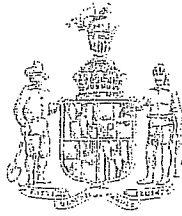


J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATON
Deputy Attorney General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

BONNIE A. KIRKLAND
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 14, 2004

The Honorable Kevin Kelly
320 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Kelly:

On behalf of your constituent Lisa L. Appel, you have asked for advice regarding the confidentiality of personnel records of public employees. Specifically, Ms. Appel has asked what laws ensure that personnel files remain confidential and protect the employee and what recourse does she have to protect her employment records.

Ms. Appel states that she is a teacher employed by the Allegany County Board of Education who recently discussed "some employment issues" with the Maryland State Teachers Association's (MSTA) union representative. She states that, without her written or verbal permission, the union representative spoke with an employee of the County Board of Education personnel department who divulged her personnel information concerning her tenure status.

The disclosure of public records is governed by the Maryland Public Information Act (PIA). State Government, §§10-601 through 10-628. The PIA covers nearly all public agencies and officials in State and local government. While the mandate of the PIA is to grant access to government records and require custodians of public records to provide access, there are numerous exceptions in the statute. One such exception requires a custodian to deny inspection of personnel records. SG §10-616(i). However, the custodian is required to permit inspection by the "person in interest." This section "was intended to give personnel file access only to the person who is the subject of the file or to those persons who actually supervise or are directly responsible for the supervision of the person who is the subject of the file." 65 *Opinions of the Attorney General* 365, 368 (1980). "Person in interest" is defined as a person that is the subject of the record or a designee of that person. SG §10-611(e). There is no legal requirement that a designee be any particular person or that the designee be so designated in writing.

The PIA provides civil and criminal penalties for unlawful disclosure of protected records. SG §10-626(a) provides that: a person..... is liable to an individual for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that the person willfully and knowingly permits inspection or use of a public record in violation of Part III of this subtitle.... Further, §10-627 provides that a person who willfully and knowingly violates any provision of Part III is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

If the facts are as Ms. Appel states in her letter, the County Board of Education employee, acting in his or her capacity as custodian of the personnel records, may have technically violated the law. However, given that union representatives without written designation on behalf of employees regarding various matters such as collective bargaining, investigations, and grievance and disciplinary matters, it is possible that both the union representative and the custodian believed the union representative to have been the employee's designee. Absent clear information to the contrary, it is unlikely that the Board of Education employee who "divulged personnel information to the union representative" would be found to have done so willfully and knowingly in violation of the statute.

While not required to be in writing, it is my understanding that the Comptroller's Office requires a written affirmation that a person seeking access to personnel information is the employee's designee. Such a policy might have prevented Ms. Appel's situation, and, as a matter of good practice, other offices would be advised to do the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie A. Kirkland", written in a cursive style.

Bonnie A. Kirkland
Assistant Attorney General

BAK:ads