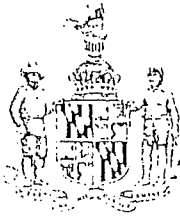


J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

CARMEN M. SHEPARD
DONNA HILL STATON
Deputy Attorneys General



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

RICHARD E. ISRAEL
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

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

October 6, 2000

The Honorable Brian E. Frosh
Suite 800
7475 Wisconsin Avenue
Bethesda, Maryland 20814-3412

Dear Senator Frosh:

You have asked for advice concerning the scope of the personnel records exemption to the Public Information Act. Specifically, you have asked whether this exemption would bar disclosure of biographical information concerning the members of the State Forest Citizen Advisory Committees. It is my view that the information is protected by the personnel record exception to the Public Information Act and that it may not be disclosed unless permission for that disclosure is given by the individual members.

The State Forest Advisory Committees are established by the Department of Natural Resources under the authority granted by Natural Resources Article, § 1-105, to assist with long range renewable forest resources planning under Natural Resources Article, § 5-214 and are appointed by the Secretary. The Maryland Alliance for Greenway Improvement and Conservation has requested biographical information on the members of the committees in order to determine "who they do, in fact, represent." The Department has refused to produce this information, stating that it is protected by the personnel record exception of the Public Information Act.

The Public Information Act establishes a presumption in favor of access to information about the affairs of government, backed up by the general rule that public records are available for public inspection. State Government Article, §§ 10-612 and 10-613. However, the Act does provide for certain exceptions, some permissive and some mandatory. State Government Article, § 10-616(i)(1) provides a mandatory exception, requiring the custodian to deny access to "a personnel record of an individual, including an application, performance rating, or scholastic achievement information." The purpose of this provision is to preserve the privacy of personal information about a public employee that is accumulated during his or her employment. 65 *Opinions of the Attorney General* 365, 367 (1980).

The first question to be addressed is whether the exception for personnel records applies to a person who is a member of an advisory committee rather than a regular employee of the State. It is my view that it does. The first thing to be noted is that § 10-616(i) does not refer to the personnel

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file of an "employee" but to the personnel file of an "individual," recognizing that the State will maintain personnel files on persons who are not employees in the traditional sense. Thus, this office has recognized that the purposes of the statute cannot be fully accomplished unless the statute is read to cover the personnel files of elected and appointed officials, since they are individuals "about whom personal information of the kind commonly found in a 'personnel record' is maintained." 79 *Opinions of the Attorney General* __ [Opinion No. 94-026 (May 9, 1994)]. It is my view that the term must also reach members of advisory boards appointed by the agencies to assist in their work.

The next question is whether the biographical information sought is of the type that is included within a personnel record. It is clear that the mere fact that a document mentions the name of an employee does not render it a personnel record. *Office of the Governor v. Washington Post Company*, __ Md. __ (No. 117, September Term 1998, September 12, 2000). For example, the Court of Appeals has held that the record of the telephone numbers or identity of a person that the Governor spoke to with reference to an applicant is not a personnel record. *Id.* Nor is a parking ticket written by the University of Maryland to one of its employees. *Kirwan v. The Diamondback*, 352 Md. 74, 82-84 (1998). However, the common sense meaning of the term does include a record that identifies an employee and relates to matters like the hiring, promotion, discipline or dismissal of the employee. 78 *Opinions of the Attorney General* 291, 292 (1993). And it clearly includes those matters reflected in documents that are specifically listed in the statute, or of the same type as the documents listed in the statute. *Kirwan v. The Diamondback*, 352 Md. 74, 82 (1998). Thus, the Act does not permit the disclosure of degree information and credits earned by teachers. 60 *Opinions of the Attorney General* 600 (1975).

Biographical information of the type sought here would most likely have to come from resumes or applications submitted by the committee members in seeking the advisory committee position. These documents are clearly comparable to the applications for employment that are expressly protected by statute, and, as such, are clearly within the protections of the personnel records exception. For that reason, it is my view that access to this information was properly denied. Of course, the individual members could waive the protections of the statute so as to allow access to some or all of this information.

I hope that this is responsive to your inquiry.

Sincerely,



Kathryn M. Rowe
Assistant Attorney General

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