

PUBLIC INFORMATION — CLERKS OF COURT — MARYLAND'S PUBLIC INFORMATION ACT REQUIRES CLERKS OF COURT CHARGED WITH MAINTAINING MARRIAGE RECORDS TO PERMIT AT REASONABLE TIMES PUBLIC ACCESS TO THOSE RECORDS WITHOUT REGARD TO THE POSSIBILITY THAT THEY WILL BE USED FOR COMMERCIAL OR OTHER BUSINESS PURPOSES.

October 29, 1976.

Mr. I. Theodore Phoebus,
Clerk of the Circuit Court
for Somerset County.

You have recently written asking our opinion as to whether your office is required to permit inspection of marriage records by individuals who wish to use the information contained therein for commercial purposes. You state that in the past it has been your policy to refuse to permit inspection whenever you became aware of such purpose, citing as a basis for your refusal your desire to protect the individuals listed in the marriage records from unwarranted invasion of their privacy.

The Maryland Public Information Act, Article 76A of the Annotated Code of Maryland (1975 Repl. Vol., 1976 Cum. Supp.), provides in Section 2(a):

"All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office."

Section 1(a) of Article 76A defines the term "public records" to include:

61 CH 6 1000

"... any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State and any counties, municipalities and political subdivisions thereof and by any agencies of the State, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law. The term 'public records' also includes the salaries of all State employees, both in the classified and nonclassified service, and all county and municipal employees, whether in a classified or non-classified service."

Article 62, Section 8 of the Annotated Code of Maryland (1972 Repl. Vol.) provides for the Clerk's duty to prepare and maintain marriage records as follows:

"The clerk of each of said courts [the circuit courts of the respective counties and the Court of Common Pleas of Baltimore City] shall procure and keep a suitable and well-bound book in his office and among his records to be called 'The Marriage License Book,' in which he shall make a complete record of the issuing of said license and all the matters which he shall be required to ascertain relative to the rights of said parties to obtain said license, in which record shall appear in regular order the items testified to by the applicants for the marriage license as above set forth; and the names of each of the contracting parties shall be properly indexed; and upon the return of the certificate aforesaid it shall appear in said record when the same was filed and the name of the minister, or other person or persons by whom the ceremony was performed."

The information included in the Marriage License Book is essentially the same as that required to be supplied in the marriage license application and in the license itself. As specified in Section 6 (a) of Article 62:

“ . . . Before the clerk of any of the courts aforesaid shall issue any license he shall examine one of the contracting parties to the marriage, under oath, who shall appear personally before the clerk and make application for the same, and the clerk shall ascertain; first, the full name of each party; second, the place of residence of each party; third, the age of each party; fourth, the marital status of each party, whether previously married or single; fifth, whether related or not, if so, in which degree of relationship; sixth, if one or both of the parties has been previously married, the date and place of all deaths and judicial determinations terminating all former marriages of each party; which facts upon the payment of one dollar (\$1.00) as an application fee shall be set out in printed form to be signed by the person making the application . . . ”

The requirements of Article 62 above mentioned make clear the fact that all of the information contained in the Marriage License Book is processed, compiled and maintained in connection with the transaction of public business by the Clerk's office, and accordingly the Marriage License Book, as well as the licenses, applications and certificates from which the information comes, would constitute public records within the definition of Section 1 (a) of Article 76A. As the information contained in the Marriage License Book is taken from the application, the license and the certificate, we assume that those desirous of obtaining access to the marriage records in your office are primarily concerned with access to the Marriage License Book. In any event, because the marriage records are public records under the terms of Article 76A, inspection and disclosure can be denied only if provided for under the exclusionary provisions

of Section 3 of the Act. However, a careful review of the possible grounds of nondisclosure of public records enumerated in that section fails, in our opinion, to reveal any basis for denying access to the Marriage License Book or any of the other marriage records you are required to maintain, regardless of their intended use by the person seeking their inspection.¹

That disclosure without regard to the purpose of the request for access to the records is required seems evident from the language of the statute itself, and such a conclusion is completely supported by our previous opinions concerning Maryland's Public Information Act and the authorities upon which those opinions are based. See, for example, 59 Opinions of the Attorney General 586 (1974) wherein we concluded that no statutory provision existed to exempt County Boards of Education from permitting access to the names and addresses of students within their schools. That opinion was in turn followed by 60 Opinions of the Attorney General 600 (1975) wherein we confirmed our earlier opinion, concluding that the giving of names and addresses of students would not be in violation of Public Law 93-380, Section 438 (b) (1) which requires educational institutions receiving federal funding to prohibit the release of

“ . . . personally identifiable records or files (or personal information contained therein) of students without the written consent of their parents ”

to other than the officials and others described in the subsection.

Similarly, in 59 Opinions of the Attorney General 59 (1974), we said that under the applicable banking laws, the Bank Commissioner had the duty to disclose the names and places of residence (although not the exact addresses) of bank shareholders, while in 58 Opinions of the Attorney General 563 (1973), we ruled that police arrest records were public records subject to disclosure under the provi-

sions of the Act and available to prospective employers absent a determination by the custodian that disclosure would be contrary to the public interest.

At the same time, we have not hesitated to recognize under appropriate circumstances, situations where either a clear privilege, considerations of confidentiality or other specified statutory exceptions provide a basis for exempting certain records or parts of records from disclosure. E.g., 58 Opinions of the Attorney General 53 (1973), wherein we ruled that consultant reports prepared in anticipation of litigation or arbitration involving construction of the parallel Chesapeake Bay Bridge were not required to be disclosed under the Act; and 56 Opinions of the Attorney General 461 (1971) relating to the way in which the State Department of Assessments and Taxation could comply with the disclosure provisions of Article 76A as to certain records containing the names and addresses of active corporations without disclosing confidential matter.

All of the above mentioned opinions were issued at a time when there were no Maryland cases available to assist in the interpretation of Article 76A, and none have been found to assist us here. But as mentioned in those opinions, the Maryland Public Information Act is in many respects similar to the federal Freedom of Information Act, 5 U.S.C. Section 552 (1967), and to the extent that there is overlap between the federal and Maryland Acts, we continue to believe it appropriate and proper to look to federal decisions for possible guidance in construing the Maryland Act.

In the case of *Getman v. NLRB*, 450 F. 2d 670 (D.C. Cir. 1971), application for stay denied 404 U.S. 1204 (1971), lists of names and addresses of employees given the NLRB by employers pursuant to the Board's request under law were held not to be exempt from disclosure under the federal Freedom of Information Act. The NLRB had contended that the release of such lists would interfere with the privacy of the employees, but the court, balancing the privacy rights against the right of the public to have the information, found that the statutory language required

disclosure particularly where the lists had initially been furnished without any express promise of their being maintained confidentially.

Recently, the United States Supreme Court in *Department of the Air Force, et al. v. Rose, et al.*, U.S. 96 S. Ct. 1592 (April 21, 1976) has apparently approved the rationale of *Getman, supra*, by declaring that the federal Freedom of Information Act reflects Congress' desire to require full agency disclosure unless information is exempted under clearly delineated statutory language. The court in so stating held that case summaries of Honor and Ethics Code hearings at a service academy, with personal references and other identifying material deleted, were not free from disclosure under the Act's exemption relating to internal personnel rules and practices of an agency and that the Court of Appeals for the Second Circuit was correct in ordering the agency to produce the case summaries for an in camera inspection by the District Court to determine the extent to which disclosure was proper. The federal exemption to which the court addressed itself was related to "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy". 5 U.S.C. Section 552(b) (6). To like effect, see *Robles v. Environmental Protection Agency*, 484 F. 2d 843 (4th Cir. 1973) which involved the request for disclosure of the location of homes thought to be constructed in part with material having potentially dangerous radioactive content. The court concluded that it was required under the Act in any case in which it was to determine the applicability of the exemption relating to files similar to personnel and medical files, to tilt the balance in favor of disclosure. In sum, the prevailing view established under the federal case law is that exemptions from public disclosure under the federal Act are to be narrowly construed. See also *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973).

There are, of course, examples of what some might regard as aberrations from the generally accepted view, but

we see them as factually distinguishable from the normal disclosure case and not as evidence of a departure from the doctrine that the exemptions are to be narrowly construed. In *Wine Hobby U.S.A., Inc. v. U.S. Bureau of Alcohol, Tobacco and Firearms*, 502 F. 2d 133 (3d Cir. 1974), for example, the Court of Appeals overruled the District Court's opinion reported in 363 F. Supp. 231 (E.D. Pa. 1973) and held that a distributor of wine-making equipment who sought names and addresses of persons who had filed home wine-making exemption forms with the Bureau of Alcohol, Tobacco and Firearms was to be denied such information because the forms constituted "similar files" within the meaning of 5 U.S.C. Section 552(b) (6), and the information contained in them concerned home activities, the disclosure of which constituted a clearly unwarranted invasion of privacy within the meaning of the exemption. See also *Ditlow v. Schultz*, 379 F. Supp. 326 (D. D.C. 1974) wherein the court held that custom declaration forms constituted "similar files" within the meaning of the Section 552(b) (6) exemption and that their disclosure could not be required since much of the information on the forms was of a confidential nature not customarily disclosed to the public by the person from whom it had been obtained.

However, as indicated above, both the *Wine Hobby* and the *Ditlow* cases are distinguishable from the situation presently before us. Aside from the fact that they involve interpretation of an exemption for "similar files" which does not exist in the Maryland Act, the matters sought to be disclosed in those two cases related to activities of the persons involved and not just to their names, addresses and other information not customarily regarded and maintained by them as confidential. On the contrary, in fact, information concerning marriages is often publicized in the society pages of local and area newspapers and the identity of the person who actually conducts or performs the marriage ceremony likewise is often publicized and is certainly available to anyone in attendance and presumably would not be denied anyone who inquired. Similarly, age is not normally regarded as of such a confidential nature that its disclosure

would constitute an unwarranted intrusion into the individual's privacy, and in this regard we note that applications for marriage licenses, including the information as to age, have traditionally been considered newsworthy enough to appear regularly in various newspapers in this State as well as in other parts of the country.

The only information contained in the marriage records of a possibly confidential nature would be the information supplied with respect to prior marital status of the individuals involved. We note, however, that Section 34 of Article 17 of the Annotated Code of Maryland (1973 Repl. Vol.) provides that the Clerks of the Circuit Court are to maintain a "book in which they shall cause to be recorded all final decrees passed in all proceedings for a divorce." This book, in effect, would fall within the definition of a "public record" set forth in Section 1(a) of Article 76A and would therefore be subject to disclosure under Section 2(a). Similarly, the fact that one of the parties applying for the license has been widowed is not the kind of information ordinarily kept secret by the person involved. Published death notices are as common as published announcements of marriage. In short, there seems to be nothing about marriage records of themselves which would preclude disclosure under the Maryland Act.

As previously mentioned herein, this is so without regard to the intended use, expressed or implied, of the person desiring access. Section 2(a) of the Act permits "inspection by any person," and there is nothing in the statute indicating a legislative intent that the purpose of the inspection has any bearing on the right of the person to inspect where the right exists. See *Hawkes v. Internal Revenue Service*, 367 F. 2d 787 (6th Cir. 1972). *Citizens for Better Education et al. v. Board of Education of the City of Camden*, 308 A.2d 35 (N.J. 1973).

In 59 Opinions of the Attorney General 586 (1974) at 589 and 590, we stated that the fear that the disclosure of names and addresses contained in public records may be commercially exploited or otherwise used in a manner irk-

some or offensive to the individuals concerned is subordinated under the statute to the concern that there be public access to public records. In this regard we agree with the summary and analysis of the situation by Judge MacKinnon as set forth in his concurring opinion in *Getman v. NLRB*, *supra*, from which we quoted in 59 Opinions of the Attorney General, *supra*, at 590 and repeat again here:

"It seems to me that furnishing bare lists of names and addresses of various groups of persons in various Government files is not the sort of disclosure that Congress basically had in mind by enacting the Freedom of Information Act. But in my opinion, the Act as it presently exists practically requires the disclosure of such lists on demand. One need not elaborate on the various abuses that could result if lists of people as classified by the Government for particular purposes became available practically on demand in wholesale lots. If this situation is to be corrected, it will require an amendment to the Act."

We believe, therefore, that, as it now reads, the Maryland Public Information Act does not in general authorize you to deny public inspection of your marriage records, no matter what their intended use.² Generally, the information contained therein simply is not privileged or confidential by law, nor are the records subject to a specified exemption under Section 3 of the Act. We note that under Section 3(f) of the Act, you as Clerk and official custodian of the marriage records are authorized to apply to the Circuit Court of your county where the records are kept for an order permitting you to restrict disclosure in any instance where you believe disclosure of the contents of the record "would do substantial injury to the public interest" even though the record might otherwise be available for public inspection. Based on the discussion above concerning the nature of the information contained in the marriage records, we do not believe that in general disclosure would constitute a substantial injury to the public interest within the terms

of the provision, and as previously stated, an intended use for commercial purposes or material gain is irrelevant under the Act. 59 Opinions of the Attorney General 586, *supra* at 589.

Since the right to inspect carries with it the right to be furnished copies of what is inspected, where available and for a reasonable fee, your duties in this connection are fully set forth in Section 4 of the Act. See also Sections 2-201, 2-203 and 7-202 of the Courts and Judicial Proceedings Article (1974 and 1975 Cum. Supp.). Your obligation to permit inspection and copying and where requested, to furnish copies, is qualified by Section 2(a) of the Act which provides essentially that the custodian is not obliged to disrupt the operation of his office in order to provide the information requested and may require inspection and copying to be done at reasonable times and under reasonable conditions. In addition, in the context of marriage records, there is nothing in the statute which requires your personnel to compile the information desired in a form different from that in which it is kept in your files. We believe also that in computing the reasonable charges for supplying any copies requested, you may properly consider the time spent by your staff in complying with the request in addition to the usual cost of mechanically duplicating the material involved.

FRANCIS B. BURCH, *Attorney General*.

ALEXANDER I. LEWIS, III, *Assistant Attorney General*.

²The exemptions provided for under Section 3 of Article 76A are set forth in three subsections. Subsection (a) requires disclosure unless it would be contrary to any one or more of the following: a State statute, a rule or order of court, a federal statute or a regulation issued thereunder having the force and effect of law. Subsection (b) provides that under certain circumstances certain enumerated categories of records, such as law-enforcement investigations, examination materials, research project data, public acquisition real estate appraisals and inter and intra agency memoranda and letters, may be withheld from the public by the custodian if he believes the disclosure of the same to be contrary to the public interest. Finally,

subsection (c) specifies that certain categories of records are to be free from inspection unless otherwise provided by law. Among the categories included are records and personnel files, adoption records, welfare records, public library circulation lists, trade secrets and other privileged or confidential business information. Under subsection (d), a person denied the right of inspection may require the custodian to furnish in writing the grounds for the denial, while judicial review is provided for under subsection (e). Even if the records subject to a request for disclosure are not otherwise exempt under Section 3, the custodian may apply to the circuit court of the county where the records are located for an order to restrict their disclosure if he believes the disclosure "would do substantial injury to the public interest". For the reasons set forth in our opinion *infra*, we do not believe any of these provisions would permit nondisclosure of marriage records.

* We note in this regard that the General Assembly has already narrowed the public's access to voter lists containing names, addresses and party affiliation. Article 31, Section 3-22(a) of the Annotated Code of Maryland (1975 Repl. Vol.) was amended by Chapter 34 of the Laws of 1976, provides in effect that no person seeking a copy of a voter registration list containing names, addresses and party affiliation of persons registered to vote in that particular precinct may have his request honored unless it is accompanied by a statement, under oath, that "the list is not intended to be used for purposes of commercial solicitation or other business purposes". The Act further provides that any person who knowingly allows the registration list under his control to be used for commercial solicitation or other business purposes is guilty of a misdemeanor and shall be punished pursuant to other provisions of the Election Law Code.

PUBLIC SAFETY AND CORRECTIONAL
SERVICES, DEPARTMENT OF

THE BALTIMORE CITY BUILDING CODE WOULD NOT APPLY TO
A SHIP PERMANENTLY MOORED WITHIN CITY LIMITS
WHICH IS OWNED BY THE FEDERAL GOVERNMENT AND
LEASED TO THE DEPARTMENT FOR USE AS A CORREC-
TIONAL INSTITUTION.

July 23, 1976.

Colonel Robert J. Lally, Secretary,
Public Safety and Correctional Services.

You have asked for our opinion concerning whether the Baltimore City Building Code would apply to the U.S.N.S. Darby if the State uses the ship for a correctional institution and docks it within Baltimore City limits. You have stated that the Department of Public Safety and Correctional Services may lease the ship from the Maritime Administration or Federal Bureau of Prisons and permanently moor it within City limits to either a State-owned pier or a privately-owned pier which the State would lease. The ship would be exempt from maritime regulations and your question is whether, under the circumstances, the ship would have to comply with the provisions of the City Building Code.

The Building Code is contained in Article 32 of the Baltimore City Code of 1966. The stated purpose of the Code is as follows:

"[T]o establish standards and to make provisions and requirements regulating the design, construction, reconstruction, . . . of buildings and other structures . . . and also regulating the grading of and excavation of land and other changes in land or parts thereof and also regulating the maintenance, operation, use and occupancy of all buildings and other structures and land . . . and also regulating the height, area and bulk of all buildings and other structures and the density of population for the purpose of protecting the public