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January 13, 1977

Honorable Steny H. Hoyer
President of the Senate
State House
Annapolis, Maryland 21401

Dear Senator Hoyer:

We are responding to your request for advice on the question of whether State, county and local government job or position descriptions are, under Code, Article 76A, §2 (the Public Information Act), available for inspection or come within the disclosure prohibition set forth in Section 3(c)(iii) thereof.

In pertinent part, Article 76A provides:

"§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."

* * *

"§3.(c) The custodian [of any public records] shall deny the right of inspection of the following records, unless otherwise provided by law:

* * *

"(iii) Personnel files except that such files shall be available to the duly elected and appointed officials who supervise the work of the person

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in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;...."

While Article 76A, §1(a), defines "public records,"¹ there is a relative dearth of authority on the question of what constitutes a "personnel file" within the meaning and intent of Section 3(a)(iii). The term is not defined in the Act; there is no formal legislative history of the Act to guide us; and neither of our appellate courts has had the occasion to address the question.² Similarly, neither the Wyoming statute³ from which the Maryland Act was lifted (albeit inartfully⁴) nor the federal counterpart⁵ contains a definition of the term or has been the subject of a relevant judicial construction. Nevertheless, we have no difficulty in advising that Section 3(c)(iii) is not, in our opinion, intended to prohibit the disclosure of a job or position description. Our advice is based upon the following analysis of applicable law.

In fulfilling our constitutional duty to interpret clearly the statutes of the State, 5 Opinions of the Attorney General 125 (1920), and to advise the Legislative and Executive branches of State government thereon, Constitution of Maryland, Article V, §3, our function, like that of the courts when presented with

¹ "The term 'public records' when not otherwise specified shall include 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 nonclassified service."

² Although *Moberly v. Herboldsheimer*, 276 Md. 211 (1975), involved an application of §3(c), the issue presented did not require a definition of the term "personnel file" and the court did not volunteer one.

³ Wyoming Statutes, §9-692.3(d).

⁴ See, *Moberly v. Herboldsheimer*, supra, 276 Md. at 227, fn. 3.

⁵ The Freedom of Information Act, 5 U.S.C. §552.

questions of statutory interpretation in cases or controversies, is to discover the Legislature's real intention and to facilitate its execution. Maryland Medical Service, Inc. v. Carver, 238 Md. 466, 477-478 (1965). In so doing, we are to seek the legislative intent first in the words used in the statute. "If the language is plain and free of ambiguity and has definite and sensible meaning, it is conclusively presumed to be the meaning of the Legislature in enacting the statute." Secretary of State v. Brightson, 244 Md. 418, 424 (1966). However, where, as here, the language of a statute is not clear, it is necessary for us to "construe" the legislation in order to determine the intention of the General Assembly. In so doing, we are guided by a number of "rules of construction," several of which are applicable to the legislation which you have called to our attention. Inter alia, we are to consider the words used in a statute:

"...in their natural and ordinary signification; if, however, the words used in the statute are of doubtful meaning, ...[we are to] consider not only their usual and literal meaning, but their meaning and effect considered in the light of the objectives and purposes of the enactment and the consequences resulting from one meaning rather than another meaning, with the real legislative intent prevailing over the intent indicated by the literal meaning of the words used."

Maryland Medical Service, Inc. v. Carver, supra, 238 Md. at 478. Consequently, we may and should look to the statute's cause or necessity, Smith v. Higinbothom, 187 Md. 115, 125 (1946); to its objectives and purposes, Clark v. State, 2 Md. App. 756, 761 (1968); to its history, Welsh v. Kuntz, 196 Md. 86, 93 (1950); to the statute read as a whole, Barnes v. State, 186 Md. 287, 291 (1946), cert. den. 329 U.S. 754; to prior and contemporaneous statutes, Department of Tidewater Fisheries v. Sollers, 201 Md. 603, 611 (1953); and to the consequences of a particular construction, Phillips v. City of Baltimore, 110 Md. 431, 439 (1909). Moreover, statutes relating to the same subject matter are to be construed with reference to each other in order that full effect may be given to all the provisions of each, if possible. Prince George's County v. White, 275 Md. 314, 319 (1975).

Applying these rules of statutory construction to Maryland's Public Information Act, we note at the outset that, like its federal counterpart, "it is unclear what kinds of materials should be considered personnel files..." for the purposes of the Act. "PROJECT, Government Information and the Rights of Citizens," 73 Michigan L. Rev., 1079 (May, June 1975). Thus, it is necessary to construe the Act in order to determine the intention of the Legislature. Also like the federal Act, Maryland's Public Information

Act has two aspects. Underscoring the recently revived recognition of the People's right and need to know what its Government is about,⁶ the basic thrust of the Act is to open public records to greater public access. However, in so doing, the Act also necessarily "seeks to preserve the confidentiality undeniably essential in certain areas of Government operations." Federal Aviation Administration v. Robertson, 422 U.S. 255 (1975) (emphasis supplied). Indeed, as we have previously observed with respect to the disclosure of personnel files, "while the thrust of the federal law apparently favors disclosure of personnel files, ...the applicable section of Maryland law generally prohibits such disclosure," 50 Opinions of the Attorney General 559, 561 (1975).

A review of the kinds of information which may be contained in a personnel file readily reveals the cause or necessity which generated the personnel file exception to the general disclosure policy of the Public Information Act. Inter alia, such files usually contain reports of background interviews, previous employment history, scholastic history, marital and family histories, medical data, vital statistics, and other highly personal information. Prior to the adoption of the Public Information Act, this information was treated as confidential and was not available to the public in general. Clearly, the purpose of Section 3(c)(iii) was but to preserve the privacy of such personal information when accumulated in the personnel process. Accordingly, the intention of the General Assembly as to what constitutes personnel files for the purposes of Section 3(c) is to be found in that construction which gives effect to both the increased public access and the preserved personal privacy aspects of the Act, and is in harmony with any other statute regulating personnel files.

The State Merit System Law also regulates personnel files. Consequently, we must also look at the purpose and thrust of that statute and construe the Public Information Act so as to harmonize the two.

As a general rule, public employment clearly is a matter of valid interest to all members of the public, both individually as potential employees and collectively as the ultimate employer

⁶ While this statute is a product of the "era of openness" which has come to be dubbed "the serious seventies," Green v. State, 25 Md. App. 679, 682 (1975); it reflects a philosophy enunciated as long ago as Madison, viz., "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance; and the people who mean to be their own Governors, must arm themselves with the power, which knowledge gives." Letter from Jas. Madison to W.T. Barry (August 4, 1822), reprinted in THE COMPLETE MADISON 337 (1953).

and the object of good government. Eliason v. State Roads Commission, 231 Md. 257, 261 (1963). Thus, as early as 1920, the General Assembly saw fit to establish a classified service for State employees. Laws of 1920, ch. 41, codified as art. 64A. This merit system law, like its counterparts at every level of American government, is:

"...designed to eradicate the system of making appointments primarily from political considerations with its attendant evils, to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments, to establish a merit system of fitness and efficiency as the basis of appointments, and to prevent discrimination in appointments to public service based on any consideration other than fitness to perform its duties. [Moreover, w]hile security of tenure in office is an important object of the civil service system, ..., civil service laws [also] were intended as a protection for the public.... Stated otherwise, civil service was not established for the sole benefit of public employees. In fact, it has been said that the primary purpose of civil service is to enable state, county, and municipal governments to render more efficient services to the public by enabling them to obtain efficient public servants.

"Civil service laws substitute for the uncontrolled will of the appointing officer the results of competitive examinations. They require that appointments to office be made from among those who, by examination, have shown themselves to be best qualified."

15A Am. Jur. 2d, Civil Service §1. Indeed, the express purpose of Article 64A:

"...is to provide candidates for appointment to positions in the classified service after determining by practical tests of the fitness of such candidates for the positions which they seek, without regard to the political or religious opinions or affiliations of such candidates, or any other standard except the business efficiency of the classified service, and to provide adequate means for the prompt removal from positions in the classified service of all persons therein who may be indolent, incompetent, inefficient, or

otherwise unfit to remain therein, and to keep in a workable state the provisions for the promotion of employees as provided in this article to the end that the same shall be so administered as to attract the best class of candidates to the classified service."

Article 64A, §44.

In furtherance of these complementary statutory purposes, the Merit System Law directs the Secretary of Personnel to establish classes and to classify therein all positions in the classified service. "Each such class shall embrace all positions similar in respect to the duties and responsibilities appertaining thereto and the qualifications required for the fulfillment thereof and shall be given a classification title indicative of character and rank of the employment." Article 64A, §16. Thus,

"[e]ach job in State government is given a job title based on assigned responsibilities and duties performed. All jobs are carefully studied and those with similar duties and responsibilities are given the same job classification and rate of pay without the same salary range. Qualifications and requirements are established for each job classification and the standards are the same everywhere in the State."

Employee Guide, State of Maryland, Dept. of Personnell (1973), p. 2; see also, Ball v. Board of Trustees, 251 Md. 685, 691 (1968).

Out of this requirement have evolved several documents: Inter alia, there is a "Specification Sheet" (MS 120A), which is sometimes referred to as a job description. There also is a "position description form" (MS 22). The specification sheet sets forth: (1) the title of the position; (2) the minimum experience, educational and physical qualifications required of applicants for the position; (3) the conditions of employment; and (4) examples of the work involved. Obviously, the very nature of the specification sheet is to put members of the public, as prospective employees, on notice of the nature of the job and the minimum eligibility requirements therefor.

The position description form (MS 22) is the official document whereby the Division of Salary Administration and Position Classification of the Department of Personnel designates the classification title of the position and the duties and responsibilities thereof. Its primary purpose is to enable the

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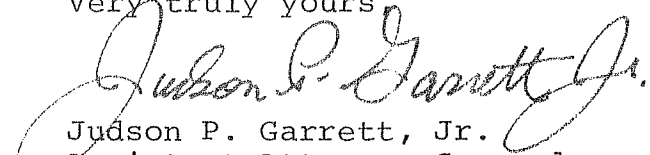
Department of Personnel to evaluate positions so as to classify those which are alike. However, it also serves to assist the appointing authority in annually evaluating the performance of the employee. In this regard, it also is important to citizens who, pursuant to §33 of the Merit System Law and with the approval of the appointing authority, wish to exercise their statutory privilege of filing written charges seeking to have an employee removed from the classified service. Accordingly, this form also should be available to members of the public if the Merit System Law in its entirety is to be capable of enforcement.

Against the background of the objectives and purposes of both the Merit System Law and the Public Information Act, and the cause or necessity of the personnel file exception of the latter, we are of the opinion that, as a general rule, the Legislature intended that the personnel exception in the Public Information Act prohibit only disclosure of a personnel document which contains personal information about an individual, and not that it prohibit disclosure of a job description or classification applicable to the holder of a position whomever it may be. While the language of the Act certainly can be read literally to prohibit the disclosure of both types of documents, there is absolutely nothing in the broad remedial nature of that Act or its personnel exception which supports such a broad construction. Quite to the contrary, such a literal reading thereof would have the absurd effect of prohibiting that which, under the Merit System Law, clearly is intended to be available to the public, and always was available prior to the enactment of Article 76A. We seriously doubt that the General Assembly intended such a result.

Accordingly, since the scope of the personnel exception is the same whether applied to the State or local governments, we advise that the Public Information Act does not prohibit the disclosure of a State, county or municipal job or position description. Quite to the contrary, absent the application of any other statutory exception with respect to a particular position, the Act mandates public access to such forms.

We trust the foregoing is fully responsive to your question and of assistance.

Very truly yours,



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