



Copy Mr. Oken

THE ATTORNEY GENERAL
Department of Licensing and Regulation
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January 26, 1977

Mr. Gordon N. Wilcox, Coordinator
Administrative and Fiscal Services
Department of Licensing and Regulation
One South Calvert Street - Third Floor
Baltimore, Maryland 21202

Dear Mr. Wilcox:

You advised us that the Office of the Secretary has maintained a centralized licensing and filing system for many of the constituent boards and commissions of the Department. Each licensee of a board is assigned a permanent registration number, which in turn, becomes a permanent file number and all material relating to that licensee is contained in the numerical file. An alphabetical card file which gives the boards access to the aforementioned permanent numerical file is also maintained as well as an addressograph plate file for each licensee which contains the licensee's name, permanent registration number, address, and in most instances, a code as to what type license has been issued. As part of the annual routine of issuing renewal licenses, when a renewal file is completed, the agency affected is furnished a numerical listing of all licensees. This is an internal control listing utilized by the agency to verify the information contained in its manual files.

You further advised that during the past few years, the boards and commissions and other units of this Department have received requests from companies located both within and without this State for a listing of licensees, the purpose of which requests is not always documented. In the majority of the cases, however, the requesting party states that it desires this listing for the purpose of solicitation of sales or distribution of

77 013

products used by the various licensees in the conduct of their business. The boards, however, do not desire to furnish such lists based on a belief that the licensees do not wish to receive mail from, or otherwise be solicited by, such companies.

You seek our advice whether these requests for lists of licensees must be honored, and if so, what authorization the Department has in establishing a price for said lists. You state that the Department does not have the present capacity to produce an alphabetical listing but that if existing plans are carried out, the Department's entire files regarding licensees will be computerized by Fiscal Year 1980 or 1981. ✓

The applicable statutes are contained in Article 76A, Annotated Code of Maryland (1975 Rep. Vol.), Section 2(a) of that Article provides, among other things, that "All public records" shall be open for inspection "by any person". The term "public records" is defined and classified in Section 1, and "office files and memoranda" is expressly included within the definition of "public records" in Section 1(b)(ii) which provides as follows:

"(ii) The term "office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as official public records; all duplicate copies of official public records filed with any agency of the State or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda." (Emphasis added).

The term "person" as defined in Section 1(g) includes any natural person, corporation, partnership, firm or association. The definition does not distinguish between residents and non-residents of this State.

Section 4(a) provides as follows:

"(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply." (Emphasis added).

This office recently made an analysis of Article 76A and a detailed review of prior opinions of this office construing it, and of federal cases applying the federal Freedom of Information Act, in our Opinion of October 29, 1976 to the Clerk of the Circuit Court for Somerset County, 61 Opinions of Attorney General 702. In that Opinion, we advised the Clerk of Court that he was obligated to permit inspection of marriage records by individuals who wished to use the information contained therein for commercial purposes. We stated:

"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 irksome or offensive to the individuals concerned is subordinated under the statute to the concern that there be public access to public records."

Senate Bill 228, which would have prohibited the Department of Licensing and Regulation from furnishing lists of licensees to firms, persons, or organizations if the purpose for obtaining the lists was for solicitation or other commercial purpose, was rejected by the Legislature during the 1976 Session.

Based on all the foregoing, it is our opinion that you must honor requests for copies of the numerical listing of licensees which, as you noted, is assembled as part of the annual routine of issuing renewal licenses. We believe that such lists are public records within the meaning of Article 76A.

Our Opinion to the Clerk of Court of October 29, 1976, concluded as follows:

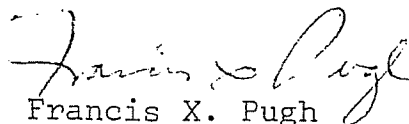
"In addition, in the context of marriage records, there is nothing in the statute which requires your personnel to compile the information desired in a form different from

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."

Adopting that reasoning to your question whether you are required to furnish a numerical listing of licensees, we do not believe you are required to assemble or compile any separate lists from the addressograph plates or to furnish copies of lists in any form other than as made in the ordinary course of business. The requirement in Section 4(a) that you furnish "printouts" would appear to require you to furnish these to requesting parties when lists of licensees are computerized and printouts are available.

We believe your request for information concerning charging a "reasonable fee" for supplying these lists is answered in the above-quoted language of our Opinion of October 29, 1976.

Very truly yours,



Francis X. Pugh
Assistant Attorney General
Counsel to the Department

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