Withdrawn
See 97-52

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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August 21, 1989

ATTORNEY GENERAL OPINION NO. 89-106

John C. Vratil
Attorney, U.S.D. No. 229
1050/40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210

Re: Laws, Journals and Public Information -- Records Open to Public -- Disclosure of Names and Addresses of School District Employees

Synopsis: A school district is required to disclose the names and mailing or residence addresses of teachers upon request for such records by any individual. K.S.A. 1988 Supp. 45-221(4), (30), as amended, do not give the district discretion to refuse to disclose this information. Computerized public information must be provided in the form requested if the public agency has the capability of producing that form. The agency is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow an individual who requests information to design or provide a computer program to obtain the information in the desired form. Cited herein: K.S.A. 21-3914; 45-215; 45-216; 45-217; 45-220; K.S.A. 1988 Supp. 45-221, as amended by L. 1989, ch. 154, § 1.

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Dear Mr. Vratil:

As attorney for Blue Valley Unified School District No. 229, you request our opinion regarding the Kansas open records act (KORA), K.S.A. 45-215 et seq. Specifically, you ask whether the school district is required to disclose records maintained by the school district which contain the names and mailing addresses of school district employees. Such records include personnel records, a directory of teachers, and information stored in a computer. You also ask whether the school district is required to generate records, such as mailing labels, from information stored in its computer. You state that the district has the ability to generate mailing labels from information stored in the computer, but that the district only generates the labels when a need exists.

Under the KORA, a public record is open for inspection by any person unless otherwise provided for by law. K.S.A. 45-216. A public record is defined in K.S.A. 45-217(f)(1) as follows:

> "'Public record' means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency."

Thus, personnel records and a teacher directory are public records. In addition, records stored on computer tapes are public records. State ex rel. Stephan v. Harder, 230 Kan. 573, 583 (1982).

A public record must be disclosed upon request by any person unless it falls within one of the thirty-five categories of records which are not required to be disclosed, or disclosure of which is specifically prohibited by statute. Records which fall into any of the categories enumerated in K.S.A. 1988 Supp. 45-221(a), as amended by L. 1989, ch. 154, § 1, are not prohibited from disclosure. Rather, the agency has discretion whether to make the record available to the public. Two exemptions under the KORA which provide for the discretionary disclosure of public records and to which you have referred are:

> "(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or

> applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.
>
> . . .
>
> "(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." K.S.A. 1988 Supp. 45-221(a), as amended.

The names of persons employed by public agencies, such as school districts, are an "exception to the exception," and thus must be provided to any person upon request. The next question is whether the KORA requires mailing or residence addresses of school district employees to be disclosed upon request, or whether such information is a personnel record containing individually identifiable information not required to be disclosed, or the disclosure of the employee's address would constitute an invasion of privacy.

This question has not been addressed by the Kansas courts. Therefore, an examination of cases in other jurisdictions provides instruction. In Warden v. Bennett, 340 So.2d 977 (1976), the Florida District Court of Appeals held that, while personnel files were not subject to the public records act, the president of a junior college was obligated by the state's open records law to furnish a labor organizer with records containing the names and addresses of college employees. The court ruled as follows:

> "While an employee may occasionally want his address kept confidential, it is seldom that the address of a governmental employee would not be ascertainable from other sources. Therefore, an employee's expectation that his address cannot be ascertained is minimal. Moreover, there are legitimate reasons why the public might wish to known the address of a public employee. On balance, we believe that the addresses of public employees do not fall within the confidentiality of

> personnel files. . . ." Warden v. Bennett, 340 So.2d at 979.

See State ex rel. Public Employees Retirees, Inc., 397 N.E.2d 1191, 1192, 1193 (Ohio 1979) (Court held that a state agency was required by the state's records law to disclose its list of names and addresses of public employee retirees.).

The issue whether disclosure of public employees' names and addresses is an invasion of privacy was discussed in Webb v. City of Shreveport, 371 So.2d 316 (La.Ct.App. 1979). In that case the court stated that the city could be compelled to reveal the names and addresses of city employees as requested since neither the city nor its employees had a reasonable expectation of privacy against disclosure of the names and addresses contained on a computer tape. The court stated:

> "There is a vast difference, however, in personnel evaluation reports and a listing (or computer printout) of names and addresses of employees of a municipality. The fact that a municipality or its employee labels the name or address of an employee as having been furnished to become a part of a confidential personnel record, does not elevate the name or address to the status of being a constitutionally protected private thing. . . . To paraphrase Prosser, complete privacy does not exist except for the eremite in the desert. A person's employment, where he lives, and where he works are exposures which we all must suffer. We have no reasonable expectation of privacy as to our identity or as to where we live or work. . . ." Webb v. City of Shreveport, 371 So.2d at 318, 319.

The Supreme Court of Michigan has also held that disclosure of home addresses of certain governmental employees does not constitute a "clearly unwarranted invasion of privacy" under its state open records law. State Employees Ass'n v. Dep't. of Mgt. & Budget, 404 N.W.2d 606, 616 (Mich. 1987). In ruling that there is no privacy invasion in the release of that information, the court stated:

> "'Names and addresses are not ordinarily personal, intimate or embarrassing pieces

> of information. The supposed right to keep such information secret is at best riddled with exceptions.'" 404 N.W.2d at 615, quoting Tobin v. Civil Service Comm'n, 416 Mich. 661, 672-673, 331 N.W. 2d 184 (1982).

The federal freedom of information act (FOIA) provides that "personnel . . . files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" are not required to be disclosed. 5 U.S.C. § 552(b)(6). In Getman v. N.L.R.B., 450 F.2d 670 (D.C. Cir. 1971), the District of Columbia Circuit Court of Appeals stated that disclosing the names and addresses of government employees obtained from personnel files does not violate exception six of the FOIA. The court stated:

> "[T]he loss of privacy resulting from this particular disclosure should be characterized as relatively minor. . . . The giving of names and addresses is a very much lower degree of disclosure [than files containing intimate details of a highly personal nature]; in themselves a bare name and address give no information about an individual which is embarrassing." Getman v. N.L.R.B., 45 F.2d at 675.

In other cases construing the personal privacy exemption of the FOIA, the First Circuit Court of Appeals stated that disclosure of the names and addresses of unsuccessful applicants for research grants could not be withheld because the information sought was not sufficiently personal or private. Kurzon v. Department of Health & Human Services, 649 F.2d 65, 68, 69 (1st Cir. 1981). The Fourth Circuit Court of Appeals stated that exemption six pertaining to personnel records (5 U.S.C. § 552(b)(6)) "applies only to information which relates to a specific person or individual, to 'intimate details' of a 'highly personal nature'" in the individual's employment record or health history. Robles v. Environmental Protection Agency, 484 F.2d 843, 845 (4th Cir. 1973).

For the reasons stated in the cases cited above, it is our opinion that the names and mailing or residence addresses of school district employees are subject to disclosure under the KORA. Exceptions to disclosure, K.S.A. 1988 Supp. 45-221(4)

and (30), as amended, do not give a school district discretion to keep such information confidential. If the names and addresses are contained in a document which also contains confidential information, the district "shall separate or delete such material and make available to the requestor that material in the public record which is subject to disclosure. . . ." K.S.A. 1988 Supp. 45-221(d), as amended. We also note that, before releasing the names and addresses, the records custodian should determine that the requestor will not use the information for prohibited purposes. See K.S.A. 21-3914, K.S.A. 45-220(c).

You also ask whether the school district is required to generate public records, such as mailing labels, from information stored in its computer. You state that the district has the ability to generate mailing labels for teachers from information stored in the computer, but that the district only generates labels when a need exist. In Attorney General Opinion No. 87-137, we stated that a public agency is only required to make available to the public those records which it makes, maintains, keeps, or possesses. The KORA imposes no duty on a public agency to create a record to compile specific information requested by an individual. See Long v. U.S. Internal Revenue Service, 596 F.2d 362, Sy. ¶2 (9th Cir. 1979); State ex rel. Stephan v. Harder, 230 Kan. 573, 582 (1982).

Teachers' names and addresses are public record. This information is stored in the computer, and remains public just as if it were contained in a file cabinet. If the names and addresses were not on computer, but contained on documents in a file cabinet, the district would not be required to provide the information in mailing label format, if such a record did not already exist. However, in this instance the information is stored on computer and the district apparently has the capability of producing the requested mailing label format. Thus, the question is whether the public may require information in computerized public records to be made available in a particular format.

K.S.A. 1988 Supp. 45-221(a)(16) provides that public agencies must maintain a register, open to the public, that describes "[t]he information which the agency maintains on computer facilities, and the form in which the information can be made available using existing computer programs." By implication the KORA requires a public agency to produce public information in the format requested, if the agency is presently capable of producing that format.

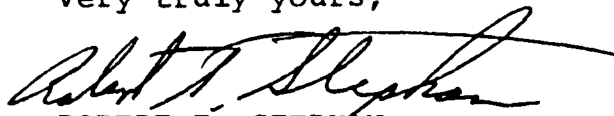
This question and similar questions were before the court in Seigel v. Barry, 422 So.2d 63 (Fla. App. 1982), pet. for rev. denied 431 So.2d 988 (Fla. S.Ct. 1983). In that case the appellees, who requested information from a school district, argued they had a right to access the school district's computer with their specially designed program. The court ruled as follows:

> "We, therefore, adopt the rule that access to computerized records shall be given through the use of programs currently in use by the public official responsible for maintaining the public records. Access by the use of a specially designed program prepared by or at the expense of the applicant may obviously be permitted in the discretion of the public official. . . ."

We agree with and adopt the above rule. Computerized public information must be provided in the form requested if the public agency has the capability of producing that form. A public agency is not required to acquire or design a special program to produce information in a desired form. A public agency has discretion to allow a person who requests information to design or provide a computer program to obtain the information in the desired form.

In summary, it is our opinion that the school district is required to disclose the names and mailing or residence addresses of teachers upon request for such records by any individual. K.S.A. 1988 Supp. 45-221(4), (30), as amended, do not give the district discretion to refuse to disclose this information. Computerized public information must be provided in the form requested if the district has the capability of producing that form. The district is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow the person who requests information to design or provide a computer program to obtain the information in the desired form.

Very truly yours,



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November 21, 1989

John L. Vratil
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1050/40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210

Dear John:

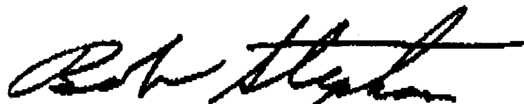
I received your letter of October 26, 1989, in regard to Attorney General Opinion No. 80-106. You express concern about the opinion in regard to the duty of a school district being required to disclose the names and mailing or residence address of school district employees upon request for such records by an individual. The opinion has been misunderstood and that may have resulted by not adequately focusing on the primary issue which we addressed.

The factual question presented was whether or not a directory, which was published for general dissemination, made the names and mailing or residence addresses of school district employees available to individuals on request. We concluded that the directory is a public record subject to disclosure. The mere fact that information contained in the directory was obtained from personal mail records does not exempt the directory for disclosure. If the directory did not exist, and the addresses were only located in the personnel file, a request for the addresses of teachers could be denied. The bottom line is that in the case presented to us, a record was created and a record for the directory was made.

You may be interested to know that Senator Wint Winter, Jr. has requested an opinion along these same lines. A copy of his request is enclosed. The materials you sent will be considered in preparing that opinion. I will advise you when the opinion requested by Senator Winter has been completed.

Thank you for contacting me and for sharing your concern.

Sincerely,



Robert T. Stephan
Attorney General

RTS:bls
Enclosure
cc: Rita L. Noll, Assistant Attorney General