



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION NO. 87- 168

Lewis C. Carter
Clerk, Kansas Appellate Courts
Kansas Judicial Center
Topeka, Kansas 66612

Re: Laws, Journals and Public Information -- Records
Open to Public -- Registration of Attorneys

Synopsis: The list of Kansas attorneys compiled by the Clerk of the Appellate Courts is a public record subject to disclosure under the Kansas Open Records Act. It is our opinion that the privacy exception to mandatory disclosure, K.S.A. 45-221(a)(30), gives the Clerk discretion in this instance to delete attorneys' social security numbers from the information contained in the list before releasing the list to the public. Cited herein: K.S.A. 1986 Supp. 21-3914; K.S.A. 45-216; 45-217; 45-220; K.S.A. 45-221, as amended by L. 1987, ch. 176, § 4; 52 U.S.C. § 552a note.

* * *

Dear Mr. Carter:

As Clerk of Appellate Courts of Kansas, you ask whether all or any part of the information compiled in connection with the annual registration of attorneys is exempt from public disclosure under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq.

Registration of attorneys is required by Supreme Court Rule 208 (235 Kan. cxxvii):

"All attorneys, including justices and judges, admitted to the practice of law before the Supreme Court of the State of Kansas shall annually, on or before the first day of July, register with the Clerk of the Appellate Courts upon such form as the Clerk shall prescribe At the time of each registration, each registrant shall pay an annual fee in such amount as the Supreme Court shall order."

The registration form contains the following information: name of attorney, judicial district and county in which the attorney's principal office is located, address, application and registration number, social security number, birth date, date admitted to the bar, whether the attorney is on active or inactive status, and date the registration fee was paid. From the registration forms your office compiles a list of licensed Kansas attorneys which includes the information supplied on the forms. Your office has received requests for copies of this list.

The KORA provides that public records of public agencies must "be open for inspection by any person" K.S.A. 45-216(a). The office of Clerk of the Appellate Courts is a public agency as it meets the definition stated in K.S.A. 45-217(e) (1):

"'Public agency' means the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state."

A "public record" is "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 45-217(f) (1). Thus, the list of attorneys compiled by your office is a public record. Not all public records, however, are required to be open for public inspection. K.S.A. 45-221(a) (1), as amended by L. 1987, ch. 176, § 4, provides that records, the disclosure of which is prohibited or restricted by law, are not subject to disclosure under the KORA. In addition, K.S.A. 45-221(a) (2)-(36), as amended, lists records which a public agency has discretion to keep confidential.

We are not aware of any state or federal law or Supreme Court Rule which prohibits disclosure of a list of licensed attorneys. However, one of the exceptions to mandatory disclosure listed in the act is applicable:

"Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

. . . .

"(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. 45-221(a), as amended.

The purpose of the privacy exception has been stated as follows:

"[The privacy exception] is intended to exempt information in government records that relates to the intimate details of a person's private life. The public's right to have access to information contained in government records is thus qualified by protection of an individual's right to maintain the privacy of personal matters having no bearing on matters of public interest." Frederickson, Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act, 33 U. Kan. L. Rev. 205, 256 (1985).

We believe that the release of an individual's social security number in this instance is an invasion of personal privacy. Federal law does not prohibit the disclosure of social security numbers. AFSCME v. City of Albany, 725 P.2d 381, 383 (Or.App. 1986). However, section 7 of the Privacy Act of 1974 must be complied with before social security numbers are disclosed:

"(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." 5 U.S.C. § 552a note.

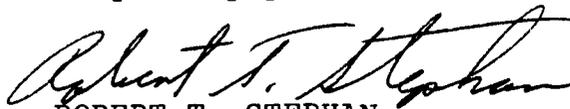
"The Privacy Act was designed to discourage improper uses of social security numbers and to allow individuals the opportunity to make an intelligent decision regarding its disclosure." Yeager v. Hackensack Water Co., 615 F.Supp. 1087, 1091 (D.C. N.J. 1985). Unless the present system of registering attorneys was in existence before January 1, 1985, attorneys cannot be required to disclose their social security numbers on the annual registration forms. In addition, the disclosure requirements of § 7(b) must be met. It can be seen that the federal Privacy Act gives an individual a privacy interest in his or her social security number. Therefore, it is our opinion that your office has discretion under the privacy exception, K.S.A. 45-221(a)(30), as amended, whether to provide the list of attorneys containing their social security numbers, or to delete this information before making the list available to the public. The federal law places "an affirmative obligation on state agencies to inform individuals who have been requested to disclose their social security numbers of certain information, including the uses to which the number will be put." Doyle v. Wilson 529 F. Supp. 1343, 1350 (D.C. Del. 1982). Thus, if social security numbers are released, attorneys must be informed of that fact. 52 U.S.C. § 552a note, Privacy Act § 7(b).

We know of no law which prohibits disclosure of the other information contained in the list. The information does not fall under the privacy exception as disclosure would not constitute a "clearly unwarranted invasion," and the public's right to know outweighs any privacy interests in the information. "Information such as place of birth, date of birth, date of marriage, employment history, and comparable data is not normally regarded as highly personal" Department of State v. Washington Post Co., 456 U.S. 595, 600, 102 S.Ct. 1957, 1961, 72 L.Ed.2d 358 (1982). Under the KORA, if a public record contains material not subject to disclosure, the public agency shall separate or delete the material and make available to the requestor the information in the public record which is subject to disclosure. K.S.A. 45-221(d), as amended.

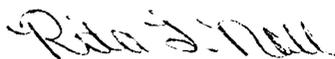
We note that there are limits placed on the use of information derived from public records. Kansas law provides that any list of names and addresses obtained from public records cannot be used to solicit those persons. K.S.A. 1986 Supp. 21-3914(a). The KORA states that a custodian of public records who reasonably believes that the requestor will use the information for solicitation purposes must deny access to the records. K.S.A. 45-220(c). Written certification furnished by the requestor to the custodian at the time of the request is evidence whether the custodian knowingly gave the information under prohibited circumstances. See Attorney General Opinions No. 87-137, 87-73.

In summary, the list of Kansas attorneys compiled by the Clerk of the Appellate Courts is a public record subject to disclosure under the Kansas Open Records Act. It is our opinion that the privacy exception to mandatory disclosure, K.S.A. 45-221(a)(30), gives the Clerk discretion in this instance to delete the attorneys' social security numbers from the information contained in the list before releasing the list to the public.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General