



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Frances Gould
Supervisor of Public Records

October 6, 2000
SPR2000/587

Kathryn B. Palmer
Deutsch, Williams, Brooks,
DeRensis, Holland & Drachman
99 Summer Street
Boston, Massachusetts 02110

Dear Ms. Palmer:

I have received your request for an advisory opinion concerning the public record status of payroll records submitted to your client, the Town of Cohasset (Town), by a subcontractor. See 950 C.M.R. 32.07 (Supervisor of Public Records may provide advisory opinion upon written request of custodian).

"Public records" is broadly defined to include all documentary materials or data made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26) (1998 ed.). The statutory exemptions are strictly and narrowly construed. Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980); Attorney General v. Board of Assessors of Woburn, 375 Mass. 430, 432 (1978). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G. L. c. 66, § 10(a) (1998 ed.); see also Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not

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blanket in nature). Moreover, there is a presumption that all government documents are public records. G. L. c. 66, § 10(c) (1998 ed.); 950 C.M.R. 32.08(4). Therefore, it is the burden of the record custodian to demonstrate that an exemption applies in order to withhold a requested document. G. L. c. 66, § 10(c) (1998 ed.); see also District Attorney for the Norfolk District v. Flatley, 419 Mass. 507, 511 (1995) (burden on custodian to prove with specificity that an exemption applies).

Exemption (c)

The Town is concerned that that disclosure of certain information will implicate the privacy interests of the record subjects. Therefore, exemption (c) merits consideration. It applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

G. L. c. 4, § 7(26)(c) (1998 ed.).

This exemption contains two distinct and independent clauses, each requiring separate analysis. Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-34 (1983). Only the second clause is relevant to this determination. See Wakefield Teachers Association v. School Committee of Wakefield, 431 Mass. 792, 801 (2000) (payroll information not viewed as personnel information). Analysis under that clause is subjective in nature and requires a balancing of the public's right to know against the relevant privacy interests at stake. Real Property Department, 380 Mass. at 625; Torres v. Attorney General, 391 Mass. 1, 9 (1984). Therefore, determinations must be made on a case by case basis.

The second clause only protects "intimate details of a highly personal nature." Real Property Department, 380 Mass. at 625. Marital status, legitimacy of children, paternity, government assistance, substance abuse, family disputes and reputation are examples of the kind of information the second clause is designed to protect. Id. at 626 n.2. Since the Public Records Law favors

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disclosure, the exemption will only apply where the privacy interest of the record subject outweighs the public interest in disclosure. Attorney General v. Collector of Lynn, 377 Mass. 151, 156 (1979). However, unless the detail in question is an intimate detail of a highly personal nature, the balancing test discussed above does not apply. Therefore, I must consider whether the payroll records contain intimate details of a highly personal nature.

Names and Addresses

It should be noted that the home addresses of Massachusetts residents over seventeen years of age are clearly public in other venues. See G. L. c. 51, §§ 6-7 (1998 ed.) (street list statute); see also Doe v. Registry of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988) (that information may be derived elsewhere reduces the expectation of privacy but is not dispositive). When examining a request for names, addresses, and registration numbers of licensees, the Attorney General opined that such information does not fall within exemption (c). 32 Op. Att'y Gen. 157, 161 (May 18, 1977). Further, names and addresses are generally available through telephone directories. Although availability of information in other forms is not dispositive of its public records status, it is a factor in the determination thereof. See Pottle v. School Committee of Braintree, 395 Mass. 861, 866 (1985) (availability of information in other sources factor in determination of privacy claim). Since neither the names or home addresses of the record subjects are intimate details of a highly personal nature, the balancing test between the individuals' privacy interests and the public interest in disclosure does not apply.

Wages

A person's financial affairs can be characterized as an intimate detail of a highly personal nature. See, e.g., Collector of Lynn, 377 Mass. at 157 (disclosure of financial difficulties can result in embarrassment to an individual of normal sensibilities). Therefore, I must weigh the employees' privacy interests against the public interest in disclosure. The courts have long held that payroll records, including salaries, of public employees are public. Pottle, 395 Mass. at 865, citing

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Hastings, 374 Mass. at 821. The courts have emphasized that public employees, by virtue of their public employment, have diminished expectations of privacy. Pottle, 395 Mass at 866, citing Hastings, 374 Mass. at 818-819.

It is my understanding that certain contractors hired by the Town have objected to the disclosure of their payroll records because the employees listed therein are not public employees. See Brogan v. School Committee of Westport, 401 Mass. 306, 309 (1987) (public employees have diminished expectation of privacy). A private contractor employed by the Town is statutorily required to submit payroll records to the Town on a weekly basis. G. L. c. 149, § 27B (1998 ed.). The statute requires that the contractor include the following information:

name, address, and occupational classification of each such employee on said works, and the hours worked by, and wages paid to, such employee.

G. L. c. 149, § 27B (1998 ed.).

The statute provides that such records shall be open to inspection by any authorized representative of the Department of Labor and Industries (Department) at any reasonable time, and as often as may be necessary. Id. The statute further provides that copies of payrolls in the custody of the Department shall be available for inspection by any interested party filing a written request to the Department Commissioner. Id. The statute does not limit disclosure but rather evidences a legislative intent to make these records available for inspection. Where the language of the statute does not restrict disclosure, the statutory right of officials to inspect records complements the right of citizens to inspect under the Public Records Law. See Collector of Lynn, 377 Mass. at 151, 154 (statute providing that records be available to town officials does not exempt records since statute does not limit disclosure to the public); see also G. L. c. 4, § 7(26)(a) (1998 ed.) (exempting those records which are specifically or by necessary implication exempt from disclosure by statute). G. L. c. 149, § 27B evidences a legislative intent to make that information which is required to be provided by a contractor to the awarding authority open to public inspection.

As the contractor has contracted with the Town, they have undertaken to perform a function which is the responsibility of a governmental entity. Moreover, the company is being paid with

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public funds. Therefore, a diminished expectation of privacy attaches to personal matters arising out of this payroll agreement. I must conclude that the strong public interest in monitoring public expenditures outweighs this diminished privacy interest in wage information contained in certified payroll records.

Marital Status and Social Security Numbers

It is possible that the records reflect an employee's family or marital status, with designation of insurance as family or single, or garnishment for alimony or child support. Family or marital status is an intimate detail highly personal in nature. Real Property Department, 380 Mass at 626, n.2. I find that the subjects' privacy interests outweigh the possible public interest in disclosure. Accordingly, any information designating the family or marital status of an employee may be withheld. See G. L. c. 66, § 10(a) (1998 ed.) (custodial duty to segregate exempt information).

Social security numbers are universal identifiers which can be used to gain access to myriad files containing personal information. Consequently, social security numbers are very personal in nature. See Swisher v. Department of the Air Force, 495 F. Supp. 337, 340 (1980) (cognate federal exemption may be used to withhold social security numbers since their disclosure will generally result in a "clearly unwarranted" invasion of privacy). Further, there is no public interest in disclosure of this information. Therefore, the Town may withhold the employees' social security numbers pursuant to exemption (c).

Summary

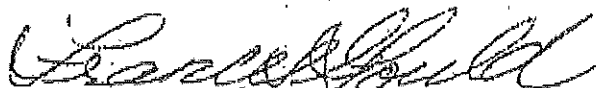
Exemption (c) will not serve to permit the Town to withhold home addresses and salaries contained in certified payrolls. The Town may withhold all material referencing family or marital status, and all social security numbers.

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I hope that this opinion has been helpful to you. If you have further questions, please contact this office.

Very truly yours,



FRANCES GOULD
Supervisor of Public Records

cc: Richard Wayne