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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

October 2, 2006

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ATTORNEY GENERAL

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Honorable John D. Harrison
Superintendent of Banks
State Banking Department
401 Adams Avenue, Suite 680
Montgomery, Alabama 36130-1201

Banking Department – Public Records –
Licensees and Permits – Proprietary
Information

Because a state agency may regulate the manner in which public records are produced, inspected, and copied, a state agency, to be in compliance with sections 36-12-40 and 36-12-41, is not required to distribute public records in the manner that a requestor specifies.

Dear Mr. Harrison:

This opinion of the Attorney General is issued in response to your request.

QUESTION

To be in compliance with sections 36-12-40 and 36-12-41 of the Code of Alabama, must a state agency grant a request to export data from its database?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that a reporter affiliated with the Montgomery Advertiser had requested certain information from the State Department of Banking regarding Deferred Presentment licensees. The reporter requests a record layout or data dictionary for whatever table or tables are contained within the database. The reporter also requests that the Deferred Presentment licensee data be exported from the contractor's application into a

delimited text file. Your letter explains that a delimited text file is a common way for data to be transferred from proprietary software into off-the-shelf office-productivity programs such as Microsoft Excel.

Section 36-12-40 of the Code is the Open Records Law, and it provides that “[e]very citizen has *a right to inspect and take a copy of any public writing* of this State, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (Supp. 2006). The Code of Alabama does not define the term “public writing.” Instead, section 41-13-1 defines “public record” as follows:

As used in this article, the term "public records" shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer.

ALA. CODE § 41-13-1 (2000).

In *Stone v. Consolidated Pub. Co.*, 404 So. 2d 678 (Ala. 1981), the Alabama Supreme Court held that the term “public writing” referred to in section 36-12-40 “is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens.” *Id.* at 681. The *Stone* Court noted that not all records kept by public officials are subject to public disclosure pursuant to section 36-12-40. Specifically, the court stated four areas in which portions of a public writing may not be subject to disclosure. That court stated the following:

It would be helpful for the legislative department to provide the limitations by statute as some states have done. Absent legislative action, however, the judiciary must apply the rule of reason. *State v. Alarid*, 90 N.M. 790, 568 P.2d 1236 (1977). Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure. Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of

public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference. MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1961).

Stone at 681.

Your request does not question whether the requested information is subject to disclosure under the Public Records Law. As such, it is the understanding of this Office that the requested information is public and subject to disclosure. Your particular question, however, contemplates whether, in an effort to comply with sections 36-12-40 and 36-12-41 of the Code of Alabama, a state agency or other public entity must provide open records according to the requestor's prescribed method of dissemination.

The Open Records Law mandates that public information is made available in a reasonable manner. This Office has stated that the public has a right to access public records during ordinary business hours at the office where the records are kept. Opinion to Honorable Johnny M. Morrow, Member, House of Representatives, dated July 10, 1992, A.G. No. 92-00335.

This Office has determined that computer records maintained by a public agency are public records that may be supplied to citizens under reasonable conditions; i.e., the agency may regulate the manner in which the public inspects and copies records. Opinion to Honorable Wayland Cooley, Madison County Tax Assessor, dated November 4, 1987, A.G. No. 88-00047. Further, this Office has determined that an agency has the authority to regulate the manner in which public records are inspected, copied and disclosed. Opinions to Honorable Jack Biddle, III, Member, Alabama State Senate, dated January 5, 2001, A.G. No. 2001-063 and Honorable F. Michael Haney, Attorney for the Water Works Board of the City of Gadsden, dated March 14, 2000, A.G. No. 2000-102.

With regard to more technologically advanced public records requests, this Office has determined that a revenue commissioner may sell to real estate companies or provide to the public a disk with information contained on computer printout of the county lot book. Opinion to Honorable Ed Hollis, St. Clair County Revenue Commissioner, dated May 27, 1991, A.G. No. 91-00263. This Office has also determined that a probate office has the ability to initiate a program whereby the office would make available to attorneys, estate companies, and mortgage companies the ability to tie into the probate office's computer system, which would allow these entities the ability to review the public records from their offices. *Cooley* at 2.

Notwithstanding these opinions, this Office has never determined that a public agency, to be in compliance with the law, must accommodate the particular demands of a person making a public record's request. The right of the public to inspect and copy public records is not unbridled. Further, the Supreme Court of Alabama has stated that the custodian of the records has the authority to regulate the manner in which records are inspected and to set reasonable limitations upon access to records to preserve the integrity of the records, minimize the expenses, and prohibit work disruption. *Blankenship v. City of Hoover*, 590 So. 2d 245 (Ala. 1991); *Holcombe v. State ex rel. Chandler*, 240 Ala. 590, 200 So. 739 (1941).

In an opinion issued to the Honorable Mike Weaver, Commissioner of Insurance, dated May 30, 1991, A.G. No. 91-00288, a similar issue was raised. In that request, the Commissioner inquired as to whether there was a statutory mandate that the Alabama Department of Insurance maintain and, upon request, provide computer printout lists of all licensed Alabama insurance agents' names and addresses in the state. In that opinion, this Office determined that the requirements of the Public Records Law were satisfied because the Insurance Department already kept a list of all licensed insurance agents and published that list yearly in a directory. *See also* Opinion to Honorable H.E. Monroe, Jr., Commissioner, Department of Revenue, dated January 8, 1998, A.G. No. 98-00158 (stating that county tax assessors may place certain public information on the Internet for public access, but are not required to do this).

It is the opinion of this Office that the Banking Department must make public information available in a reasonable manner. Based on the previous opinions and caselaw, the Banking Department may regulate the manner in which public records are produced, inspected, and copied. As such, the Banking Department is not required to distribute public records in the manner in which the requestor specifies.

In the present matter, this Office has been informed that the Banking Department allows access to paper files that contain the public information that is also contained within the computer database of the Banking Department. Thus, the information that is public in the database is currently being made available to the public for inspection and copying, although not in the format requested.

Although not asked, nothing in this opinion should be interpreted as permitting a state agency to deny access to public information on the basis that such information is contained within its database. *See* Opinion to Honorable Ira J. Silberman, Director, Alabama Development Office, dated June 4, 1998, A.G. No. 98-00157.

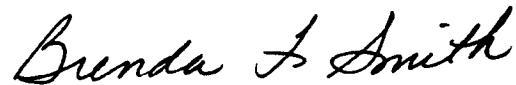
CONCLUSION

Because a state agency may regulate the manner in which public records are produced, inspected, and copied, a state agency, to be in compliance with sections 36-12-40 and 36-12-41, is not required to distribute public records in the manner that a requestor specifies.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in black ink that reads "Brenda F. Smith". The signature is written in a cursive style with a large initial 'B' and 'S'.

BRENDA F. SMITH
Chief, Opinions Division

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