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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Melvyn W. Salter
Chairman, Cherokee County Commission
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Public Records – Revenue Commissioners –
County Commissions – Employees, Employers,
Employment

The Cherokee County Commission (“Commission”) must make available, for inspection and copy, time sheets of employees in the Revenue Commissioner’s Office. Certain sensitive information, however, that may be contained in those records, such as doctor’s excuses or time off taken for medical reasons or personal vacation time, is *not* public record. Other information that may be contained in the records requested, such as medical history, confidential recommendations for employment, drug or alcohol testing results, home addresses, telephone numbers, Social Security numbers, and marital status of public employees, are not public records and are not subject to disclosure. The custodian of records responding to these requests for public records should ensure that the *mentioned sensitive personnel* information is redacted from any publicly disclosed records.

The custodian of records may recover the reasonable cost involved in providing the requested records to a citizen, including reasonable costs of preparing and copying the records. The Commission may not assess legal fees on the requesting party that are incurred as a result of a request for public records. What constitutes “reasonable costs” is a factual

determination that must be made by the Commission.

The Cherokee County Commission is not required to provide the records within the time frame requested regardless of any other business being conducted by the Commission. The custodian of records must make the records available for copy and inspection during the normal business hours, within a reasonable period of time that the request was made, and may do so in such a manner as to "prohibit work disruption." Again, the Commission must determine what constitutes a "reasonable" period of time.

Whether the Commission will be required to pay the attorney's fees to a party who has been successful in suing the Commission pursuant to a request for public records will be a matter left to the sound discretion of the trial court. This Office does not opine on the underlying merits of such a hypothetical lawsuit or the awarding of attorney's fees.

Dear Chairman Salter:

This opinion of the Attorney General is issued in response to your request on behalf of the Cherokee County Commission.

QUESTION ONE

Does the Cherokee County Commission have to release time sheets for all employees in the Revenue Commissioner's Office pursuant to a request for public records?

FACTS AND ANALYSIS

In your letter dated April 10, 2008, you informed this Office that a certain party has requested information from the Cherokee County Commission. Your

letter also states that the party making the requests is seeking access to particular documents within a specific time frame. Your letter and supporting documentation indicate that the party is seeking, among other things, time sheets of employees in the Revenue Commissioner's Office, which may include sensitive information such as time off for doctor's visits and doctor's excuses.

Section 36-12-40 of the Code of Alabama, known as the Public Records Act, requires 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. 2007). The Code does not define the term "public writing." Instead, section 41-13-1 defines a "public record" as follows:

[A]ll 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). The Supreme Court of Alabama has defined "public record," as used in section 36-12-40 of the Code, as "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." *Stone v. Consol. Publ'g Co.*, 404 So. 2d 678, 681 (Ala. 1981).

The Public Records Act lists several exemptions that are not subject to disclosure:

Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or

having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C. §5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. §388.113(c)(1) as amended) the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.

ALA. CODE § 36-12-40 (Supp. 2007).

In addition, the Alabama Supreme Court, in *Stone*, stated that the following types of public writings need not be publicly disclosed: (1) recorded information received by a public officer in confidence; (2) sensitive personnel records; (3) pending criminal investigations; and (4) records the disclosure of which would be detrimental to the best interests of the public. *Stone*, 404 So. 2d at 681.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

Under the plain language of section 36-12-40, the Public Records Act gives a broad right to the public to inspect and take a copy of any public writing. The Alabama Supreme Court has said that section 36-12-40 "is remedial and should therefore be liberally construed in favor of the public." *Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 862 (Ala. 2004).

This Office, however, has opined that an employee's medical history, confidential recommendations for employment, and drug or alcohol testing results are not public records as they fall under the sensitive personnel records exception set out in *Stone*. Opinion to Ms. Constance S. Aune, Mobile County Board of Education, dated October 4, 1995, A.G. No. 96-00003. The home addresses, telephone numbers, and marital status of public employees may also be withheld from public inspection.¹ Opinion to Honorable Jay M. Ross, Daphne City Attorney, dated August 17, 2006, A.G. No. 2006-134.

On the other hand, this Office has opined that “[a county health care authority] is required to disclose the annual salaries of top-level management executives to the public because such information is a matter of public record.”² Opinion to Honorable Mary F. Gunter, Attorney, Henry County Health Care Authority, Inc., dated October 2, 2007, A.G. No. 2008-004. This Office also stated that records containing “an employee’s gender, ethnic origin, date of birth, educational background, work experience, benefits, salary, and so forth” are not sensitive personnel records exempt from disclosure. Opinion to Chancellor Charles L. Payne, dated December 16, 1987, A.G. No. 88-00079.

Time sheets of employees in the Revenue Commissioner’s Office do not fall under any exceptions “expressly provided by statute.” ALA. CODE § 36-12-40 (Supp. 2007). Moreover, based on previous opinions issued by this Office, time sheets of state employees do not appear to constitute “sensitive personnel records” exempt from disclosure. Attendance records and time sheets are information kept in the ordinary course of business that informs the public as to the performance of employees who work for the Commission and, therefore, the public. See *Stone*, 404 So. 2d at 681.

¹ In addition, the custodian of records does have a responsibility under the Code to “redact, remove, cover, or otherwise excise the Social Security number of any person from any document that is available for public inspection” unless express consent has been obtained from such party whose information is made available to the public. ALA. CODE § 41-13-6 (Supp. 2007).

² Your question contemplates whether the Commission must disclose the time sheets of “all” county employees. “Public officers,” as used in section 41-13-1, includes, “in addition to the ordinary public offices, departments, commissions, bureaus and boards of the state and the public officers and servants of counties and municipalities, *all persons whatsoever occupying positions in state institutions.*” ALA. CODE § 36-12-1 (2001) (emphasis added). Under the plain language of section 36-12-1, all Cherokee County employees are considered “public officers” for purposes of section 36-12-40 and, thus, are subject to certain public disclosures.

CONCLUSION

It is the opinion of this Office that the Commission must make available, for inspection and copy, time sheets of employees in the Revenue Commissioner's Office. Certain sensitive information, however, that may be contained in those records, such as doctor's excuses or the reasons for time off taken for medical reasons or personal vacation time, may not be a public record. Other information that may be contained in the records requested, such as medical history, confidential recommendations for employment, drug or alcohol testing results, home addresses, telephone numbers, Social Security numbers, and marital status of public employees, are not public records and are not subject to disclosure. The custodian of records responding to these requests for public records should ensure that the aforementioned sensitive personnel information is redacted from any publicly disclosed records.

QUESTION TWO

What are reasonable charges that the Commission may charge for preparing documents under a request for public records, and may they include the costs incurred in seeking legal advice?

FACTS, ANALYSIS, AND CONCLUSION

This Office has opined that custodians of public records must provide free access to public records. If, however, copies of records are requested, a custodian of public records may recoup reasonable costs incurred in providing public documents to a citizen, including, where necessary, costs for retrieving and preparing the records and the actual cost of copying the records. Opinion to Honorable Tim Parker, Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161. In the *Parker* opinion, this Office further stated that if a request for public records requires an agency to incur legal expenses, such as "a ministerial function, the costs of which should be born by the public as a whole. Assessing legal fees against a citizen to enable the custodian to decide whether his or her records are public would seriously restrict access to public records." *Id.*

QUESTION THREE

Does the Commission have to provide the information requested within the time frame requested?

FACTS, ANALYSIS, AND CONCLUSION

“[T]his 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.” Opinion to Honorable John D. Harrison, Superintendent of Banks, State Banking Department, dated October 2, 2006, A.G. No. 2007-001. The right of the public to inspect and copy public records is not unbridled. *Id.* Further, the Supreme Court of Alabama has stated that the custodian of 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). 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. The custodian, however, may not cause any unreasonable delays in accommodating a request for public records.

QUESTION FOUR

Would the Commission be liable for the requestor's legal expenses if he were to sue the Commission for not complying with his requests?

FACTS AND ANALYSIS

Under the American rule, a prevailing litigant is not entitled to have attorney's fees paid by the opposing party, absent a contractual or statutory right or a recognized ground of equity.³ *Porter v. Hook*, 554 So. 2d 382 (Ala. 1989);

³ Section 14 of article I of the Constitution of Alabama provides “[t]hat the State of Alabama shall never be made a defendant in any court of law or equity. Section 14 of article I has been construed as barring “claims seeking the recovery of attorney fees and expenses.” *Ex parte Ala. State Bd. of*

Reynolds v. First Ala. Bank of Montgomery, N.A., 471 So. 2d 1238 (Ala. 1985). The courts of this state, however, have recognized certain equitable exceptions to allow the court to award attorney's fees. Where a litigant's suit results in a "benefit to the general public" by bringing an improper governmental practice to an end, the public nature of the services rendered by the litigant's attorney may justify awarding attorney's fees. *Bell v. The Birmingham News Co.*, 576 So. 2d 669, 670 (Ala. Civ. App. 1991).

In *Advertiser Co. v. Auburn University*, 579 So. 2d 645 (Ala. Civ. App. 1991), the Alabama Court of Civil Appeals declined to award attorney's fees to a litigant who successfully brought suit under the Public Records Act. In that decision, the court specifically refused to "read [*Bell*] to mean that in every instance where a 'common benefit' arguably accrues to the general public because of actions of the plaintiff, attorney's fees must be taxed as costs."⁴ *Id.* at 647. The court also noted that, although awarding attorney's fees to the successful party "are authorized, they are not, of course, compelled." *Id.* The court also stated that "the decision to award or deny attorney's fees lies within the sound discretion of the trial court."⁵ *Id.*, citing *Rayford v. Rayford*, 456 So. 2d 833 (Ala. Civ. App. 1984); *Nolen v. Nolen*, 398 So. 2d 712 (Ala. Civ. App. 1981).

CONCLUSION

Whether the Commission will be required to pay the attorney's fees to a party who has been successful in suing the Commission pursuant to the Public Records Act will be a matter left to the sound discretion of the trial court. This Office does not opine on the underlying merits of such a hypothetical lawsuit or the awarding of attorney's fees.

Chiropractic Examiners, ___ So. 2d ___, 2007 WL 2965154, 2 (Ala. Civ. App. 2007), citing *Ex parte Town of Lowndesboro*, 950 So. 2d 1203, 1212 (Ala. 2006). There are several exceptions to this general rule as noted herein.

⁴ Assuming *arguendo* that the Commission is successfully sued by the party seeking certain records pursuant to section 36-12-40, the ultimate determination of whether the party seeking records under a request for public records conferred a "common benefit" upon the public will be a determination made by the court based on all of the facts before it.

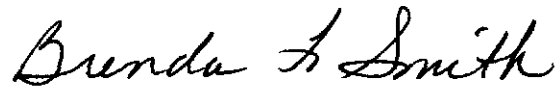
⁵ The decision of the trial court may only be reversed upon a showing of "abuse of discretion." *Rayford*, 456 So. 2d at 834.

Honorable Melvyn W. Salter
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Pete Smyczek of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/PJS

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