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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Douglas Albert Valeska
District Attorney's Office
Henry and Houston Counties
Post Office Box 1632
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District Attorneys – Public Records –
Checks – Expenses – Costs and Fees –
Houston County

The checking account numbers on checks
are not subject to disclosure under the
Open Records Law and should be redacted.

A reasonable fee may be assessed in
providing public records for the cost of
retrieving, preparing, and copying the
records.

Dear Mr. Valeska:

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

QUESTIONS

Should the checking account numbers on checks
drawn on the checking account for the district
attorney's office be disclosed pursuant to an open
records request?

If not, may copies of the checks be provided with
the numbers redacted?

FACTS AND ANALYSIS

Your request states that you received an open records request as follows:

The [records] request specifically requests that I allow an individual to search through the financial records and make copies of those records that they determine they require. Some of the records requested to be viewed include checks written on this office's checking account, on which the checking account number is printed. Checking account numbers grant direct access to financial resources, and as an elected official, I have a responsibility to safeguard the public funds to which I am entrusted.

You do not question whether checks are subject to disclosure. Instead, you question whether certain financial information, on a document that is otherwise subject to disclosure as a public record, may be withheld from release.

Section 36-12-40 of the Code of Alabama, known as the Open Records Law, states 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 (2013) (emphasis added). The Code of Alabama does not define the term "public writing." The Supreme Court of Alabama has defined "public record," as used in section 36-12-40, 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).

Not all public records, however, are subject to disclosure. The Open Records Law lists several exemptions, and as noted earlier, the statute specifically acknowledges that other statutes may expressly prohibit disclosure of certain information. ALA. CODE § 36-12-40 (2013). Furthermore, in *Stone*, the Court 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.

This issue is one of first impression for this Office and has not been addressed by the Alabama appellate courts. The Court in *Stone*, however, in addition to providing certain specified exemptions, noted that absent legislative clarification, courts must apply the rule of reason. The Court set forth a balancing test: "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 the government carried on efficiently and without undue interference." *Id.*

In an ever-changing and technologically advanced society where identity theft is rampant, the idea of releasing the checking account number for your office is unreasonable. The public may ascertain information regarding expenditures without the disclosure of the actual account numbers for your financial records. The release of this information would also be disruptive to the operation of the office as there would be the constant concern that financial information had been compromised. Accordingly, the release of such information would be detrimental to the best interests of the public.

This conclusion is supported by opinions of the Kentucky Attorney General. The Kentucky open records provision is similar to the provision in Alabama in that the public is given broad authority to inspect all public records, and there is no express provision limiting access to financial information. In determining that bank account information of a public agency was not subject to disclosure, the Kentucky Attorney General opined as follows:

The Kentucky Court of Appeals has held that redaction of private information such as social security numbers should be redacted from public records pursuant to KRS 61.878(1)(a). This reasoning applies to private bank account numbers. In addition, this office has held that a public agency's bank account numbers are exempt from disclosure pursuant to KRS 61.872(6). The reasoning behind these decisions is *if any agency disclosed this type of information, public money would be at risk of theft. A public agency would be forced to change bank accounts and change the paperwork associated therewith. This makes the disclosure of public bank accounts overly burdensome* under the Open Records Act.

Ky. Op. Atty. Gen. 16-ORD-012, 2016 WL 544886, at *2 (internal citations omitted) (emphasis added). *See also*, Ky. Op. Atty. Gen. 15-ORD-186, 2015 WL 5896039 (noting that the release of financial records lends itself to subversive use and would be an unreasonable burden on the agency because the agency would be forced to overhaul an existing system each time the record was requested and released).

Based on the foregoing, it is the opinion of this Office that a public agency should not disclose the account numbers associated with that agency's financial records as a result of a public records request. Information that is not subject to disclosure may be redacted from an otherwise public writing. *See generally*, opinions to Honorable Courtney R. Potthoff, Attorney, City of Eufaula, dated June 26, 2014, A.G. No. 2014-068; Honorable Tom Wilson, DeKalb County Coroner, dated December 4, 2006, A.G. No. 2007-015.

CONCLUSION

The checking account numbers on checks are not subject to disclosure under the Open Records Law and should be redacted.

QUESTION

May I charge for the time and expense (such as locating the checks, copying the checks, etc.) associated with complying with the open records request?

FACTS AND ANALYSIS

As a general rule, members of the public are entitled to receive free access to public records. If, however, copies of records are requested, because of budgetary constraints, a custodian of public records may recoup reasonable costs incurred in providing public documents, including costs for retrieving and preparing the records and the actual cost of copying the records. A public agency may not assess members of the public for legal expenses incurred in an effort to enable the custodian of records to determine whether records are subject to public disclosure. Opinions to Honorable Melvyn W. Salter, Chairman, Cherokee County Commission, dated April 21, 2008, A.G. No. 2008-073; Honorable Tim Parker, Jr., Member, House of Representatives, dated June 12, 1998, A.G. No. 98-00161.

This Office notes that the public does not have unbridled access to documents. Specifically, this Office has stated that a public agency may regulate the manner in which public records are produced, inspected, and copied. Opinion to Honorable John D. Harrison, Superintendent of Banks, dated October 2, 2006, A.G. No. 2007-001.

CONCLUSION

A reasonable fee may be assessed in providing public records for the cost of retrieving, preparing, and copying the records.

Honorable Douglas Albert Valeska
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in black ink, appearing to read "G. Ward Beeson, III". The signature is written in a cursive style with a horizontal line at the end.

G. WARD BEESON, III
Chief, Opinions Section

LS/MMG
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