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Honorable Bobby E. Denton
Member, Alabama State Senate
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Industrial Development
Authorities - Public Records -
Public Information

Names and resumes of applicants for position of executive director of Shoals Industrial Development Authority are matters of public record. If resume contains confidential information, the release of which would cause undue harm or embarrassment to applicant, such information may be kept confidential.

If Authority refuses to release such information on ground that it should remain confidential, the burden will fall on Authority to show that it properly refused access.

Dear Senator Denton:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Should the names and resumes of applicants for the position of executive director of

the Shoals Industrial Development Authority
be a matter of public record?

FACTS AND ANALYSIS

The Shoals Industrial Development Authority (the Authority) was organized pursuant to Act 86-231 and Act 86-244, 1986 Regular Session.

Section 3 of both Acts provides as follows:

"Upon the organization of the Shoals Industrial Development Authority, said authority shall be constituted an instrumentality for the exercise of public and essential government functions and the exercise of the powers conferred by this act, and the development of the Shoals area shall be deemed to be an essential governmental function of the cities and counties."

At the outset we note that the public's right of access to public records is well established by statute. Code of Alabama 1975, § 36-12-40 provides:

"Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. 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."

Moreover, the term "public writing" as used in § 36-12-40 was defined in Stone v. Consolidated Publishing Co., 404 So.2d 678 (Ala. 1981), 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."

The Stone case further established that "a public record includes all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by public officers in the transaction of public business."

The court additionally noted that 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 exceptions which may not be subject to public disclosure.

In the later case of Chambers v. The Birmingham News Co., 552 So.2d 824 (Ala.Sup.Ct. 1989), the court stated that the legislature intended that § 36-12-40 be "liberally construed," and further held that "[t]here is a presumption in favor of public disclosure of public writings and records expressed in the language of § 36-12-40."

The court further held that the exceptions set forth in Stone must be strictly construed and must be applied only where it is readily apparent that disclosures would result in undue harm or embarrassment to an individual, or where the public interest would clearly be adversely affected when weighed against the public policy considerations suggesting disclosure. The court further stated that the party refusing disclosure has the burden of proving that the writings or records sought are within an exception and warrant nondisclosure.

Accordingly, in Chambers the court held that applications, resumes and other related materials received by the Shelby County Commission from persons applying for the newly created position of coordinator of water and sewer services were public writings subject to disclosure under § 36-12-40.

We further deem it significant that Section 3 of the Acts creating the Authority specifically provides that the Authority "shall be constituted an instrumentality for the exercise of public and essential governmental functions and the exercise of the powers conferred by this act, and the development of the Shoals area shall be deemed to be an essential governmental function of the cities and counties."

Honorable Bobby E. Denton
Page 4

In light of the aforesaid case law and the language contained in the Acts creating the Authority, it is the opinion of this office that the names and resumes of applicants for the position of executive director of the Authority are matters of public record. If a resume contains confidential material, the release of which would cause undue harm or embarrassment to the applicant, such information may be kept confidential. Opinion to Honorable James D. Hughston, Attorney at Law, under date of October 24, 1990.

It should be noted, however, that if the Authority refuses to release any of the aforesaid materials, the burden will fall on the Authority to show that it properly refused access. Opinion to Chancellor Charles L. Payne, under date of December 16, 1987.

CONCLUSION

The names and resumes of applicants for the position of executive director of the Shoals Industrial Development Authority are matters of public record. If a resume contains confidential information, the release of which would cause undue harm or embarrassment to the applicant, such information may be kept confidential.

If the Authority refuses to release such information on the ground that it should remain confidential, the burden will fall on the Authority to show that it properly refused access.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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