

OFFICE OF THE ATTORNEY GENERAL



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Honorable George C. Wallace, Jr.
State Treasurer
State Capitol
Montgomery, AL 36130

College Tuition Trust Fund -
Public Records

The names and addresses and
other personal information of
the purchasers of prepaid
tuition contracts are not a
matter of public record.

Dear Mr. Wallace:

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

QUESTION

What, if any, information pertaining
to individual contract holders is public
record, and may any part of such record be
withheld from public access?

FACTS, LAW AND ANALYSIS

The Wallace-Folsom Prepaid College Tuition Trust Fund
established by Act No. 89-862, as amended by Act No. 90-570,
is codified in §§ 16-33C-1 through 16-33C-8, Code of
Alabama 1975. Under the provisions of this statute a trust
fund has been established for the prepayment of college
tuition. The mechanism by which this is done is a contract
with a purchaser for the lump-sum or installment prepayment
of tuition costs by the purchaser for a qualified beneficiary
under the statute to attend any state college or university
to which the qualified beneficiary is admitted. At the time

of the purchase of the contract, an account is established for the individual which shows the name and address of the contract purchaser and other pertinent information. These records are maintained by the office of the state treasurer, who serves as Chairman of the Trust Fund Board created pursuant to the Wallace-Folsom Prepaid College Tuition Act.

Requests have been made of the state treasurer, who is ex officio chairman of the Fund's Board of Trustees, for release of names and addresses of contract holders. As these contracts are purchased by these individuals with their own funds and no tax money is involved, there is concern about the confidentiality of these records. A thorough review of the law under which the Trust Fund is established and the contracts entered reveals that there is no provision in that statute relating to public accessibility of information on individual contract holders. The statute does require that the Board of Trustees make available summary information on the financial condition of the Trust to all purchasers of prepaid tuition contracts and to deliver an accounting annually of the Trust Fund to the governor, lieutenant governor, and speaker of the house of representatives.

"Public records" are defined in § 41-13-1, Code of Alabama 1975, as last amended, 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 the 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 to 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."

In § 36-12-40, Code of Alabama 1975, we find:

"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 of records and information concerning the use of

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."

In Stone v. Consolidated Publishing Co., 404 So.2d 678 (Ala. 1981), the Supreme Court held that a public writing is a record "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 the citizens." Under the Stone case 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 under §§ 36-12-40 and 36-12-41.

This office recognizes that the statute allowing the inspection of public records is to be liberally construed. Chambers v. The Birmingham News Company, 552 So.2d 854 (Ala. 1989). However, we are of the opinion that the names and addresses of contract holders of prepaid college tuition through the Prepaid College Tuition Trust Fund are not matters of public record.

Initially, it must be remembered that the funds involved are not tax funds and, in most cases, come from payments by private individuals. This is true, although assets of the Prepaid College Tuition Trust Fund are considered public funds. Section 16-33C-6. The statute requires that summary information on the financial condition of the Trust be made available to purchasers of prepaid college tuition contracts. Section 16-33C-8(1). However, there is nothing in the statute that requires that the names and addresses of the purchasers be made available for public inspection.

Recorded information received by a public officer in confidence is not open to public disclosure. Stone v. Consolidated Publishing Company, *supra*; 66 Am.Jur.2d, "Records and Recording Laws," § 29. When individuals purchase the prepaid tuition contracts, they do so with the expectation that personal information involved in the contract, including their names and addresses, will not be disclosed to the public. Statistical information regarding the status of the Trust Fund or the number of purchasers of the prepaid tuition

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contracts would not violate the confidentiality of the contract purchasers, and would be appropriately disclosed.

We suggest that you may want to poll the purchasers of contracts or provide on the contract an option to allow release of information or to claim confidentiality to assist the Board in determining its future policy regarding its question.

Private individuals have a right to be protected against an unwarranted invasion into their personal financial matters, and the publicizing of one's private affairs with which the public has no legitimate concern. 62A Am.Jur.2d, "Privacy," § 1. While citizens have a right to know the financial status of the Prepaid College Tuition Trust Fund, no legitimate public purpose would be served by releasing the names and addresses and other personal information of the contract purchasers.

CONCLUSION

The names and addresses and other personal information of the purchasers of prepaid tuition contracts are not a matter of public record.

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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