



2013-013

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Kim T. Thomas  
Commissioner, Alabama Department of Corrections  
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**THIS OPINION HAS BEEN  
AMENDED BY ACT 2013-  
172.**

Public Records – Ethics Commission –  
Statement of Economic Interests – State  
Employees

Statutorily required information on  
statements of economic interests filed  
pursuant to section 36-25-14 of the Code  
of Alabama are not subject to redaction.  
The Ethics Commission should redact  
home telephone numbers from statements  
of economic interests prior to public  
disclosure.

Dear Commissioner Thomas:

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

QUESTION

If the reports of statements of economic interests  
reports filed with the Alabama Ethics Commission by  
merit system employees are public documents, should  
the Ethics Commission redact the identifying  
information contained in section 41-13-7 of the Code of  
Alabama?

FACTS AND ANALYSIS

Generally, all public employees whose base pay is more than \$50,000 per year are required to complete and file a statement of economic interests pursuant to section 36-25-14 of the Code of Alabama. Effective August 1, 2012, the threshold amount for filing increased to \$75,000 per year. 2012 Ala. Acts No. 2012-509.

The statement of economic interests includes numerous general financial disclosures. In addition thereto, however, section 36-25-14 provides as follows:

The statement shall contain the following information on the person making the filing:

Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult children; name of parents and siblings; name of living parents of spouse. Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

ALA. CODE § 36-25-14(b) (Supp. 2012). Although not included in the statute, the statement of economic interests form generated by the Ethics Commission also requires the inclusion of the filer's home telephone number.

Statements of economic interests filed pursuant to section 36-25-14 of the Code are public records. *See* ALA. CODE § 36-25-4(a)(5) (Supp. 2012) (the Ethics Commission has a duty to "make reports and statements filed with the commission available . . . to public inquiry").

Moreover, the 2010 amendments to the Code of Ethics for Public Employees required the Ethics Commission to implement and maintain an electronic database accessible to the public through an Internet website that provides, at least, the following capabilities: "Search and retrieval of *all* statements, reports, and other filings required by this chapter, excluding complaints made confidential by Section 36-25-4(b), by the name of the public official or public employee to which they pertain." ALA. CODE § 36-25-4.3(2)a. (Supp. 2012) (emphasis added).

Accordingly, statements of economic interests filed with the Ethics Commission by public employees are public records. *See also* ALA. CODE § 41-

13-1 (2000) (public records are documents received in pursuance of law by the public officers of the state).

Not all public records, however, are subject to disclosure. Opinion to Honorable E. Shane Black, Attorney, City of Athens, dated March 13, 2012, A.G. No. 2012-045. Even the Public Records Act acknowledges that other statutes may expressly prohibit disclosure of certain information. ALA. CODE § 36-12-40 (Supp. 2011). One such statute, as referenced in your request, is section 41-13-7 of the Code. That section, in its entirety, states as follows:

(a) As used in this section, the following terms shall have the following meanings:

(1) **EMPLOYEE.** *Any person who is regularly employed by the state and who is subject to the state Merit System.*

(2) **IDENTIFYING INFORMATION.** Any information, not including a person's name, which used either alone or in conjunction with other information specifically identifies a person or a person's property, and includes, but is not limited to, any of the following information related to a person:

- a. Date of birth.
- b. Social Security number.
- c. Driver's license number.
- d. Financial services account numbers, including checking and savings accounts.
- e. Credit or debit card numbers.
- f. Personal identification numbers (PIN).
- g. Electronic identification codes.
- h. Automated or electronic signatures.
- i. Biometric data.
- j. Fingerprints.

k. Passwords.

l. Parents' legal surname prior to marriage.

m. *Home address or phone number.*

n. Any other numbers or information that can be used to access a person's financial resources, obtain identification, act as identification, or obtain goods or services.

(b) *Notwithstanding any other law to the contrary*, a state department, licensing or regulatory board, agency, or commission is prohibited from placing or otherwise revealing the identifying information of an employee including, but not limited to, full- or part-time employees thereof, on any document that is available for public inspection including, but not limited to, state personnel evaluation forms and any other forms related thereto *unless otherwise required by law*, without the express consent of the person with the identifying information, or the consent of that person's parent, custodian, legal guardian, or legal representative. The foregoing prohibition shall not apply to a bona fide news organization or when a federal or state agency makes a request for or releases identifying information for a legitimate government purpose, or pursuant to a federal or state statute, regulation, or federally funded program or pursuant to an administrative or judicial subpoena or order. Nothing in this section is intended to create or establish a new cause of action for damages in any court. Nothing in this section shall be construed as a waiver of sovereign or qualified immunity. This section shall not be applicable to a document originating with any court or taxing authority, any document that when filed by law constitutes a consensual or nonconsensual lien or security lien or security interest, or any record of judgment, conviction, eviction, or bankruptcy. If express consent to reveal identifying information has not been obtained, a state department or agency shall redact, remove, cover, or otherwise excise the identifying information of any person from any

document that is available for public inspection so that the remaining portion of the document may be revealed.

ALA. CODE § 41-13-7 (Supp. 2012) (emphasis added). In adopting section 41-13-7 of the Code, the Legislature recognized that there would be instances, “otherwise required by law,” where identifying information would be disclosed.

This Office is, of course, cognizant of the problem presented by identity theft and the Legislature’s attempts to address the issue. *See, e.g.*, ALA. CODE § 13A-8-192 (Supp. 2012) (identity theft is a felony); ALA. CODE § 41-13-6 (Supp. 2012) (social security numbers are not to be available for public inspection). Similarly, the preamble to Act 2009-759, now codified as section 41-13-7 of the Code, states that the purpose of the act is “[t]o provide that the identifying information of state employees is excluded from those records available for public inspection.” 2009 Ala. Acts No. 2009-759, 2293. Considering these factors in conjunction with the plain language of the statute, it is apparent that the Legislature intended to shield the identifying information of state merit system employees from disclosure.

There is a conflict between the Ethics Act and section 41-13-7 of the Code; the Ethics Act requires that certain information be gathered and disclosed, and section 41-13-7 requires that the same information be kept confidential. Where there is a conflict in sections or provisions, one dealing specially with a subject and the other doing so generally, the special section must prevail. *Karrh v. Bd. of Control of Employees’ Ret. Sys. of Alabama*, 679 So. 2d 669, 671 (1996); *Cooper Transfer Co. v. Ala. Pub. Serv. Comm’n*, 271 Ala. 673, 676, 127 So. 2d 632, 634 (1961); *Ivey v. Ry. Fuel Co.*, 218 Ala. 407, 409, 118 So. 583, 584 (1928); *Holloway v. Henderson Lumber Co.*, 203 Ala. 246, 247, 82 So. 344, 345 (1919).

Further, specific provisions relating to specific subjects are understood as exceptions to general provisions relating to general subjects. Specific provisions relating to specific subjects control general provisions relating to general subjects. *Ex parte Jones Mfg. Co., Inc.*, 589 So. 2d 208, 211 (Ala. 1991); *Murphy v. City of Mobile*, 504 So. 2d 243, 244 (Ala. 1987); *Herring v. Griffin*, 211 Ala. 225, 226, 100 So. 202, 203 (1924).

The Ethics Act is the more specific law, and section 41-13-7 is the more general law. Section 36-25-4.3 and section 36-25-14 of the Code are specific statutes that require the Ethics Commission to gather certain information about a subset of public employees on a statement of economic interests and to make that information public through a searchable internet database.

Section 41-13-7 of the Code, however, is a generally applicable provision that governs the privacy of state merit employees with respect to public records created in the course of performing state functions, such as documents in the employee's personnel file or other records. To apply both of these conflicting statutes, the Ethics Commission should not redact identifying information from ethics forms if that information is statutorily required to be included on the form for the purpose of disclosing the information to the public.

Other canons of statutory construction compel the same conclusion. Under the principle of *expressio unius est exclusio alterius*, where a statute enumerates certain things on which it is to operate, the statute must be construed as excluding from its effect all things not expressly mentioned. *Ex parte T.B.*, 698 So. 2d 127, 129 (Ala. 1997); *Ex parte Holladay*, 466 So. 2d 956, 960-61 (Ala. 1985); *City of Birmingham v. Brown*, 241 Ala. 203, 208, 2 So. 2d 305, 309 (1941); *Hall v. Blan*, 227 Ala. 64, 68, 148 So. 601, 603 (1933).

Here, the Legislature expressly provided a process for certain undercover law enforcement officers to keep confidential the information on his or her statement of economic interests. But the Legislature did not provide any general exception for merit system employees or, for that matter, any other public employee or public official. 2012 Ala. Acts No. 2012-509. In other words, the Legislature considered the possibility that the information provided on the form might be misused, but the Legislature weighed employees' interest in privacy and the public's interest in disclosure and chose to address the potential problem in a targeted way.

Although the statutorily required elements of statements of economic interests must be disclosed to the public, certain information listed on an ethics form may, nonetheless, be redacted prior to disclosure. This is true of all public records. *Black* at 5, *citing* opinion to Honorable Vivian Davis Figures, Member, Alabama State Senate, dated March 17, 2006, A.G. No. 2006-068 & opinion to Honorable Charles West, Board Chairman, Cumberland Mountain Water Authority, dated July 30, 2003, A.G. No. 2003-204.

For example, section 36-25-14 of the Code does not mandate that public employees disclose his or her home telephone numbers on their statements of economic interests. Because disclosure is not required by law, its disclosure does not fall within the exception contemplated by section 41-13-7 of the Code. Further, the Supreme Court of Alabama has determined that information that is more personal than public is not subject to disclosure. *Blankenship v. City of Hoover*, 590 So. 2d 245, 250 (Ala. 1991).

This Office has determined that home telephone numbers are more personal than public. *Black* at 5. "The home address, *telephone number*, and

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social security number of an individual may be more personal than public in nature, and thus not subject to disclosure.” *Id.* (emphasis added). Because home telephone numbers are more personal than public, and not statutorily required to be included in statements of economic interests, there is no requirement that the home telephone number of any public employee, merit or otherwise, be subject to public disclosure.

#### CONCLUSION

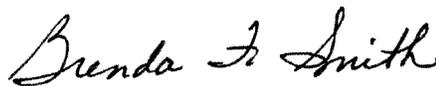
It is the opinion of this Office that statements of economic interests are public records. The information statutorily required to be included in the statement of economic interests is not subject to redaction. The Ethics Commission should redact, however, the identifying information of merit system employees if that identifying information is not statutorily required to be included on the form. Home telephone numbers, for example, are not public and not statutorily required to be disclosed in the statements of economic interests of public employees and should be redacted.

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

Sincerely,

LUTHER STRANGE  
Attorney General

By:



BRENDA F. SMITH  
Chief, Opinions Division

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