2015-037

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

April 3, 2015

Honorable Donald B. Sweeney, Jr.
Attorney, Hoover City Board of Education
Bradley, Arant, Boult & Cummings
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2119

Education, Boards of – Public Records – Compensation – Employers, Employees, Employment – Open Records Law – Jefferson County

The Hoover City Board of Education is required to disclose, by name, the compensation of employees under the Open Records Law.

Dear Mr. Sweeney:

This opinion of the Attorney General is issued in response to your request on behalf of the Hoover City Board of Education.

QUESTION

Are the names of employees of the Hoover City Board of Education public records in addition to their compensation?

FACTS AND ANALYSIS

Your request states that a private citizen has asked the Hoover City Board of Education ("Board") to produce payroll records of all earnings for all persons paid by the Board. You further state that hundreds of employees have notified the Board of their objections to the release of this information. This Office understands that the Board has provided a list of the salaries for each employee, categorized by job description and school, but not by name. The attorney for the citizen has provided this Office with a copy of a letter stating that the citizen does not seek information regarding "income deferral, retirement, withholding and the like." Letter from James P. Pewitt, Attorney, James P.

Pewitt, LLC, to Donald B. Sweeney, Jr., Bradley, Arant, Boult & Cummings at 2 (Feb. 11, 2015). The citizen likewise does not seek "social security numbers, names of minor children, dates of birth, addresses, financial account numbers, marital status, medical information, confidential recommendations of employment, or drug and alcohol testing results." *Id.*

Section 36-12-40 of the Code of Alabama is the Open Records Law, and it provides 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).

It is well settled that payroll records, such as salary or other compensation, are public records. See the following opinions:

- Honorable Melvyn W. Salter, Chairman, Cherokee County Commission, dated April 21, 2008, A.G. No. 2008-073;
- Honorable Mary F. Gunter, Attorney, Henry County Health Care Authority, Inc., dated October 2, 2007, A.G. No. 2008-004;
- Honorable Roy Smith, Member, House of Representatives, dated June 11, 1992, A.G. No. 92-00307;
- Honorable Alvin Holmes, Member, House of Representatives, dated January 13, 1988, A.G. No. 88-00117;
- Honorable Charles L. Payne, Chancellor, Alabama Department of Postsecondary Education, dated December 16, 1987, A.G. No. 88-00079;
- Mr. Cartledge W. Blackwell, Dallas County Commission, dated October 31, 1985, A.G. No. 86-00038;
- Honorable Jerry B. Jones, Etowah County Tax Assessor, dated March 7, 1983, A.G. No. 83-00214.

This Office has specifically reached this conclusion with regard to boards of education. Opinion to Ms. Constance S. Aune, Mobile County Board of Education, dated October 4, 1995, A.G. No. 96-00003. Moreover, this Office has stated that a citizen or entity is entitled to inspect a list of teachers and other board personnel. Opinion to Honorable John R. Key, Superintendent of Education, Pike County Board of Education, dated August 1, 1988, A.G. No. 88-00390.

The *Smith* and *Holmes* opinions clarify that names and titles may be obtained along with salary information. This principle is more fully developed in the *Payne* opinion, which considered a broad request for personnel data that

included salaries. That opinion addressed the similar question of whether the "information for each person [would] have to be specified by name rather than a numerical percentage (e.g., ten percent of the employees have masters degrees as opposed to listing every person's name who holds a masters degree)." *Payne* at 4-5. The *Payne* opinion concluded that employee names are subject to disclosure.

Finally, although your concern about the privacy rights of employees may be valid, that is a matter for the Legislature to address. This Office has explained, as follows, the analysis to engage in when faced with such concerns:

> [T]here are certain types of . . . information that are private and should not be disclosed. As stated above, there is "a presumption in favor of disclosure, and the burden is on the party seeking protection from disclosure." *Birmingham News Co. v. Perry*, 1993 WL 528446, 2 (Ala. Cir. 1993). However, "[c]ourts 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 government carried on efficiently and without undue interference." *Water Works and Sewer Bd. of City of Talladega*, 892 So. 2d at 865. "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 areas which may not be subject to public disclosure." *Birmingham News Co.*, 1993 WL 528446 at 2.

Opinion to Honorable William A. Meehan, President and Secretary of the Board of Trustees, Jacksonville State University, dated April 3, 2007, A.G. No. 2007-067 at 5 (emphasis added).

The *Payne*, *Smith*, and *Blackwell* opinions rejected application of the exception for sensitive personnel records to compensation. As the *Smith* opinion reasoned, "[w]e believe that ***when balancing the interest of public employees*** against the rights of the general public to know what their government is doing, then salary or other compensation data pertaining to a public employee is a public record and is due to be disclosed." *Id.* at 2, *citing Blackwell.*

CONCLUSION

The Hoover City Board of Education is required to disclose, by name, the compensation of employees under the Open Records Law.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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