

OPINION NO. 73-034

Syllabus:

Any citizen or taxpayer of the State of Ohio who requests to view, or have copies made of, salary or compensation records of employees of the University of Toledo at any reasonable time should be permitted to inspect or have copies of such records at cost.

To: Glen R. Driscoll, Pres., University of Toledo, Toledo, Ohio
By: William J. Brown, Attorney General, April 19, 1973

I have before me your request for my opinion, which reads as follows:

In recent weeks I have received three different requests to release information revealing names and salaries of various individuals on campus. In one instance the request was for salaries of all faculty and administration. In another, the request was for all faculty salaries in the department to which the requesting faculty member belongs. In the third, the request was for individual administrative salaries.

On the advice of legal counsel I have denied all of the above requests. In an effort to clarify this matter once and for all The University of Toledo requests an official opinion from your office defining: to whom, in what form, and for what purpose salaries of individual employees should be released.

The controlling statute is R.C. 149.43, which provides:

As used in this section, "public record" means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law.

All public records shall be open at all reasonable times for inspection. Upon request,

a person responsible for public records shall make copies available at cost, within a reasonable period of time.

The central issue of your request is whether a salary record is a "record required to be kept." If the answer is in the affirmative, there can be no question as to the "public" nature of such records.

In a recent unreported case in the Court of Common Pleas of Mahoning County, this issue was squarely presented. State, ex rel. Youngstown State University Chapter of the Ohio Education Association v. Youngstown State University, Case No. 72 CI-171 (1972). This was an action requesting the issuance of a writ of mandamus to compel officials at Youngstown State University to produce copies, at cost, of the salary records of all employees of the defendant University. The court, in granting the requested writ, found "that salary records of Youngstown State University are public records as defined and contemplated by the Statutes of the State of Ohio . . . and that as provided by Section 143.43, of the Ohio Revised Code, said records must be kept open at all reasonable times for inspection." Judgment Entry of Judge C. W. Osborne, filed March 10, 1972, in Case No. 72 CI-171, supra.

A close reading of Curran v. Board of Park Commissioners, 22 Ohio Misc. 197 (1970), lends support of the decision above. Plaintiff-relator in the Curran case, supra, sought a writ of mandamus to compel the respondent board to open its land acquisition files for inspection. Plaintiff there apparently desired an inspection of appraisals made by persons not affiliated with the state, which appraisals were contained in the land acquisition files. In denying the writ, the court stated in 22 Ohio Misc. 199:

It is clear that resolutions authorizing land purchases, contracts executing the resolutions and even outgoing mail relative to either one should be open to public view. But it is also clear, that documents originating elsewhere including appraisals, need not be made public, even though official action is based in part upon them. (Emphasis added.)

Inasmuch as salaries, and records in relation thereto, do not originate elsewhere but are ultimately connected with the functioning and funding of the state-supported university, such records cannot be withheld from public view upon the grounds articulated in the Curran case. Cf. Opinion No. 71-053, Opinions of the Attorney General for 1971.

The Curran decision went on to define "public records" in the following terms (22 Ohio Misc. 199):

Construing Section 149.43, Revised Code, I hold that public records are those records which a governmental unit is required by law

to keep or which is necessary to keep in discharge of duties imposed by law.

Salary records of employees at the University of Toledo, unlike the appraisal reports in Curran, clearly meet both of these alternative definitions. That such records are "necessary to keep in discharge of duties imposed by law" cannot be questioned. This appears from a reading of R.C. 3360.03, which provides:

The Board of Trustees of the University of Toledo shall employ, fix the compensation of, and remove, the president and such number of professors, teachers, and other employees as may be deemed necessary.

R.C. 121.21 also reads:

The head of each department, office, institution, board, commission, or other state agency shall cause to be made and preserved only such records as are necessary for the adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.

Upon consideration of these two statutes, it is apparent that the board of trustees is not only required to fix the compensation of its employees, but is required to keep and preserve records which affect the "financial rights . . . of persons directly affected by the agency's activities." Clearly employees' financial rights are directly affected by records of their compensation from the University.

The reasons behind the requirements of availability to the public of "public records" have been expressed by a Michigan Supreme Court case, Nowack v. Fuller, 243 Mich. 200, 219 N.W. 749, 60 A.L.R. 1351, at 1353 (1928), which held:

Ours is a government of the people. Every citizen rules. In Michigan the people elect by popular vote an auditor general. They prescribe his duties and pay his salary. He is required to keep a true account of the expenditure of all public moneys, and is answerable to the people for the faithful discharge of his his duties. He is their servant. His official books and records are theirs. Undoubtedly it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books, for the purpose of seeing how their money was being expended and how their business was being conducted . . . There is no question as to the common-law right of the people at large to inspect public documents and records. The right is based on the interest which citizens necessarily have in the matter to which the records relate.

The only argument which might possibly be advanced against access to records by citizens is the contention that, in many instances, the right of the public to inspect records is an invasion of privacy of the employees. In Getman v. N.L.R.B., 450 F.2d 670 (CA6 1971), suit was initiated to compel the National Labor Relations Board to furnish names and addresses of employees eligible to vote in certain elections for the purpose of telephoning the employees and arranging interviews with them. The Court of Appeals, in affirming the District Court's order granting relief, considered the contention by defendant N.L.R.B. that to compel disclosure would constitute an invasion of privacy of those employees. It was noted that there might well be some loss of privacy; however, in balancing the interests of the public purpose against the individuals' right to privacy, the court held that disclosure should be made as it was not a "clearly unwarranted invasion of employee privacy." 450 F.2d at 677.

At common law there was a requirement that the individual seeking to inspect public records must show some interest in the subject matter of the inspection. See Annot., 60 A.L.R. 1356. In Ohio, however, the rule would appear to be different. State, ex rel. Sullivan v. Wilson, 24 Ohio L. Abs. 208 (1937). This was an action in mandamus to compel city officials to allow inspection and copying of records of the civil service commission. The relator desired to copy the roster of all persons in the classified service with all information (including salary) available on those employees. As in the instant situation, there was a statute (G.C. 486-7 (3)) providing that the records were to be open to the public. In granting the writ prayed for, the court noted at page 210:

As I construe the civil service law, one of its purposes is that the record of every person, how they got their appointment, what their job is, what they are paid, should be a matter of public record for the information of the public or those of the public who desire to have that information.

In so holding, the court also specifically refuted the contention that the citizens must have a legitimate, demonstrable interest in the particular part of the record which he desires to inspect.

It should be emphasized that R.C. 149.43 also provides that "public records shall be kept open at all reasonable times for inspection." (Emphasis added.) While this would clearly require that copies of such documents be available for the public, I do not think that it can reasonably be anticipated to require that a public institution either provide specific information in any particular form, or that it undertake a compilation of information for any person when such information is not generally kept. It would appear to require only that whatever records are kept be "available" for reasonable inspection, with copies, at cost to the person requesting them and within a "reasonable" time thereafter.

In specific answer to your question it is my opinion, and you are so advised, that any citizen or taxpayer of the State of Ohio who requests to view, or have copies made of, salary or compensation records of employees of the University of Toledo at any reasonable time should be permitted to inspect or have copies of such records at cost.