DEPARTMENT OF JUSTICE
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DEPT. OF JUSTICE

ROBERT M. SPIRE
Attorney General
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DATE: February 27, 1990

SUBJECT: Availability of State Employee Bonus Information Under the Public Records Statutes

REQUESTED BY: Jerry L. Sellentin, Director
State Department of Personnel

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

You have asked for our opinion on the following question: "[c]an a State agency be required to provide the public with access to information concerning whether or not a particular agency employee received a bonus, based upon performance, and the amount, which information is contained in the employee's personnel file?" Our answer to your question is "yes," but in a limited fashion as discussed below.

Your opinion request apparently grows out of a recent situation where an employee of a state agency requested that the agency provide information specifying which employees received bonuses during the year and the amount of the bonuses received. Under Chapter 7, Section 006 of the Nebraska Classified System Personnel Rules, a bonus is actually a form of merit pay increase and such an increase can only be awarded for documented superior job performance. Accordingly, release of the bonus information would, in effect, provide information on which employees received superior performance evaluation ratings and which did not.

Apart from the requirements of good operating policy and courtesy, we are aware of no Nebraska statutes which require state agencies to respond generally to questions from the public or to create or prepare materials in response to such general public questions. Therefore, we do not believe that an agency must create a list of employees who received bonuses. However, the public has a right to review existing public documents under the provisions of our state public records statutes, Neb.Rev.Stat. §84-712 et seq (Reissue 1987). Access to the bonus information in question therefore depends upon what particular documents are available, and whether those documents must be made public under the public records statutes.

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There is very little case law interpreting the provisions of our state public records statutes. However, it is clear that where the words of a statute are plain and unambiguous, no interpretation is needed to ascertain their meaning, and, in the absence of anything to indicate to the contrary, words will be given their ordinary meaning. Vulcraft, a Division of Nucor Corporation v. Karnes, 229 Neb. 676, 428 N.W.2d 505 (1988). Moreover, an effect must be given to all the several parts of a statute, and no portion should be rejected as meaningless or superfluous. NC+ Hybrids v. Growers Seed Association, 219 Neb. 296, 363 N.W.2d 362 (1985).

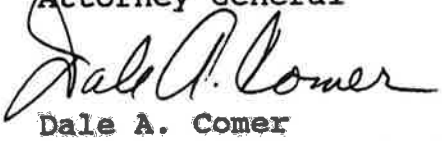
Neb.Rev.Stat. §84-712.05 establishes several categories of public documents which may be withheld from the public by the lawful custodian of those records. Subsection (7) of §84-712.05 lists "personal information in records regarding personnel of public bodies other than salaries and routine directory information" as a category of information which may be kept confidential. We believe that subsection (7) would clearly allow a public agency to keep employee evaluations and bonus information in an employee's personnel file confidential. In addition, we believe that other materials or records reflecting such personal information may also generally be kept confidential. For example, a list prepared by the agency of those employees who received bonuses and the amount of each bonus could be kept confidential under subsection (7).

On the other hand, it is clear that the public is entitled to review salary records under subsection (7). Moreover, Neb.Rev.Stat. §84-712.01(2) provides that the public records statutes shall be liberally construed whenever warrants, payrolls, vouchers or other fiscal records are involved. Therefore, we believe that fiscal records reflecting salary information for public employees may not be withheld from the public simply because they might indicate who received a bonus. On this basis, members of the public have an absolute right to review payroll warrants and other payment documents of state agencies.

Consequently, we believe that a state agency is required to release fiscal records which reveal salary payments to individual employees, and it may be possible for a person to review those records and determine who received a merit increase. To the extent that such fiscal records therefore "provide the public with access to information concerning whether or not a particular agency employee received a bonus, based upon performance, and the amount," even though that information is also in the employee's personnel file, your original question must be answered in the affirmative.

Sincerely yours,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
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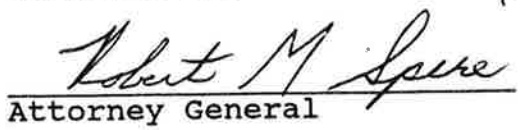
cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:



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