



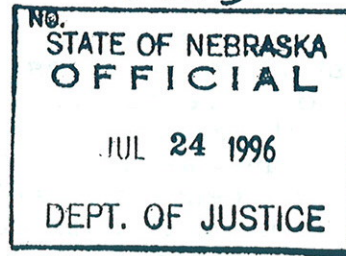
STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
1235 K ST. FAX (402) 471-4725

**DON STENBERG**  
ATTORNEY GENERAL

#96055

STEVE GRASZ  
LAURIE SMITH CAMP  
DEPUTY ATTORNEYS GENERAL



DATE: July 19, 1996

SUBJECT: *Neb. Rev. Stat. § 81-1117.02 (1994)* and the Confidentiality of Data Maintained in Computer Files by the Department of Administrative Services

REQUESTED BY: Lawrence S. Primeau, Director  
Department of Administrative Services

WRITTEN BY: Don Stenberg, Attorney General  
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you indicate that the Nebraska Accountability and Disclosure Commission (the "Commission") has contacted the Department of Administrative Services ("DAS") and requested permission to access certain DAS computer records pertaining to state employees for name and address information regarding employees who are required to file a Statement of Financial Interests with the Commission. From materials you provided to us, we understand that the Commission wishes to contact various state agencies and request the position number of each employee required to file a Statement of Financial Interests. The Commission would then use that position number to extract the name and home address of each such employee from the DAS computer files containing such information with regard to state employees. The purpose of this effort is apparently to allow the Commission to inform each employee directly of his or her obligation to file disclosure statements. You have concerns as to whether this procedure would violate the confidentiality provisions set out in *Neb. Rev. Stat. § 81-1117.02 (1994)*. You have, therefore, requested our opinion as to "whether existing state statutes for

David K. Arterburn  
L. Jay Bartel  
J. Kirk Brown  
David T. Bydalek  
Dale A. Comer  
James A. Elworth  
Lynne R. Fritz  
Royce N. Harper

Lauren L. Hill  
Jay C. Hinsley  
Amy Hollenbeck  
William L. Howland  
Marilyn B. Hutchinson  
Kimberly A. Klein  
Joseph P. Loudon

Charles E. Lowe  
Lisa D. Martin-Price  
Lynn A. Melson  
Ronald D. Moravec  
Fredrick F. Neid  
Marie C. Pawol  
Kenneth W. Payne

Paul N. Potadle  
Jonathan Robitaille  
Hobert B. Rupe  
James D. Smith  
James H. Spears  
Mark D. Starr  
Martin Swanson

Timothy J. Texel  
John R. Thompson  
Barry Waid  
Terri M. Weeks  
Alfonza Whitaker  
Melanie J. Whittamore-Mantzios  
Linda L. Willard

Lawrence S. Primeau  
July 19, 1996  
Page -2-

the Nebraska Accountability and Disclosure Commission and/or the Department of Administrative Services would allow for DAS to provide such information."

Section 81-1117.02 provides, as follows:

(1) Neither the data processing administrator, the Director of Administrative Services, nor any employee of such administrator or director shall release or permit the release of any data maintained in computer files to any person or persons without the express written approval of both the agency primarily responsible for collection and maintenance of such data and the employee to whom such data pertains, except as provided in subsection (2) of this section.

(2) Any data which is a public record in its original form shall remain a public record when maintained in computer files and shall be provided to the Legislative Fiscal Analyst pursuant to section 50-420 and shall be made available to the Auditor of Public Accounts solely for use in the performance of audits prescribed by law.

**Neb. Rev. Stat. § 81-1117.03** (1994) goes on to provide that violation of § 81-1117.02 shall constitute a Class II misdemeanor and grounds for removal from office or discharge at the discretion of the governor or agency head.

We have reviewed the statutes pertaining to the Commission and DAS generally, and we have found no statute which specifically allows the Commission to access the employee information in question on DAS computers, or which allows DAS to disseminate that information to the Commission. Consequently, it appears to us that this situation is governed primarily by the provisions of § 81-1117.02.

In Nebraska, in the absence of anything indicating the contrary, statutory language is to be given its plain and ordinary meaning. *Application of City of Grand Island* 247 Neb. 446, 527 N.W.2d 864 (1995). With this rule in mind, it seems to us that the plain meaning of the language used in § 81-1117.02(1) would prevent the Commission from accessing employee information contained on DAS computers without the requisite written authorization from the agencies and employees involved. This is particularly true since **Neb. Rev. Stat. § 49-801** (1993), the statute which contains general definitional provisions for the language used in all Nebraska statutes, defines "person" as follows:

Lawrence S. Primeau  
July 19, 1996  
Page -3-

Person shall include *bodies politic* and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations.

(Emphasis added). As a result, "person," as it is used in § 81.1117.02(1) would include the Commission. Therefore, we do not believe that the Commission can access the personnel information in your files in the manner it proposes, and it must have the requisite written authorization from the agencies and employees involved. Our conclusion in that regard is supported by the legislative history of the various bills which went into the existing version of § 81-1117.02.

Subsection (1) of 81-1117.02 was originally added to the Nebraska statutes as a result of LB 472 passed by the Legislature in 1975. Although not entirely clear, it appears that the purpose of the bill was to restrict access to information and data on the computers at DAS and to protect the confidentiality of employment information. As noted by Senator Marvel, the Chairman of the Committee which proposed LB 472:

There are two amendments to this bill [LB 472]. These clarify the use of information in the computer. If you're interested in this area I suggest you look at the amendments. It protects the individuals and the information cannot be extracted without the permission of employee and administrator, or director of the department.

Floor Debate on LB 472, 84th Neb. Leg., 1st Sess. 2899 (April 22, 1975) (Statement of Sen. Marvel).

Subsequent to the passage of LB 472, this office took the position, informally and formally, that even government records otherwise public in nature could not be obtained from the DAS computer, but must be obtained from the public officer generating them. For example, in 1975-76 Rep. Att'y Gen. 272 (Opinion No. 195, dated March 8, 1976), we stated:

Prior to the enactment of L.B. 472 no impediment existed to disclosing these [public] records. After enactment [of that bill], although still public records, computer files containing these records could not be released. The records are available from the officers responsible for generating them but not from the computer file.

Finally, in 1979, subsection (2) of 81-1117.02 was amended twice to specifically allow the Auditor of Public Accounts and the Legislative Fiscal Analyst access to computerized DAS records in

certain instances. See 1979 Neb. Laws LB 193, § 1; 1979 Neb. Laws LB 414, § 4. The comments of Senator Warner, the introducer of LB 193, which allowed the Legislative Fiscal Analyst access to computerized records at DAS, are instructive as to the intent of the section:

LB 193 is a revision of a bill that was proposed by the Committee last year, which was enacted and subsequently vetoed. The reason for the veto was the concern that it was perhaps drafted too broadly in relation to maintaining the confidentiality requirements that we have by law on the information in the computer. So all that has ever been attempted is that the current system under law, we cannot . . . the Legislature cannot directly access the computer for the kind of information we normally use in the development of the consideration of budgets. The process currently is required if you want to get something out that is on the computer, public information, is a written consent from the agency involved prior to the time that you can get it. Frequently, or at least occasionally, there will be some times that even discussion on the floor [sic] in which members want specific information relating to some detail in an agency's operating budget and if we had the ability and direct access into the computer for that information it would expedite and assist the Legislature in the consideration of these issues. What the Committee amendment does, it very narrowly restricts what access we would have into the computer files dealing only with that information that is under the authority of the accounting administrator of the Department of Administrative Services, and only that information which would otherwise be public information as far as the individual agencies are concerned, and restricted only for the official duties that the fiscal staff has in relation to the Legislature.

Floor Debate on LB 193, 86th Neb. Leg., 1st Sess. 3404-3404 (April 12, 1979) (Statement of Sen. Warner). Therefore, if the Commission wishes to directly access state employee information such as home addresses in DAS computer files, it seems to us that it will be necessary for the Commission to have specific statutory authorization to do so similar to that provided to the Auditor of Public Accounts and the Legislative Fiscal Analyst by LB 193 and LB 414 in 1979.

We would also note that the home addresses of state employees are personnel information which may be withheld from the public under the Public Records Statutes and the State Personnel Rules. See Neb. Rev. Stat. § 84-712.05 (7); 273 NAC 11, § 001.

Lawrence S. Primeau  
July 19, 1996  
Page -5-

Consequently, to the extent that there is any indication in § 81-1117.02 that the information at issue here is a public record, it still could be kept confidential under those statutory and administrative provisions.

In sum, we believe that, under § 81-1117.02(1), the Commission may not access the employee information contained on DAS computers which it seeks without the requisite written authorization from the agencies and employees involved. To the extent that the Commission wishes different access than that provided by that statute, remedial legislation will be necessary.

Sincerely yours,

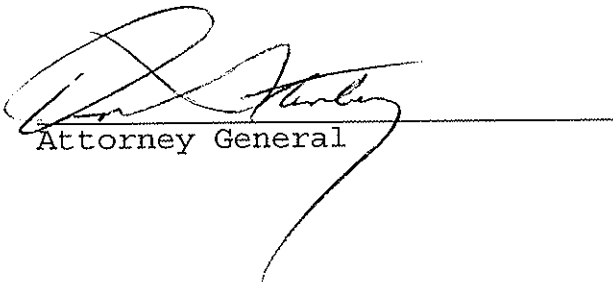
DON STENBERG  
Attorney General



Dale A. Comer  
Assistant Attorney General

05-54-14.op

Approved by:



Attorney General

