

May 8, 1997

John H. McLaughlin, Chairman  
New Hampshire Retirement Board  
4 Chenell Drive  
Concord, New Hampshire 03301

Dear Mr. McLaughlin:

You have requested our advice concerning access to certain Retirement System information under the Right-to-Know Law, RSA 91-A. Specifically, you have sought our advice about the release of detailed information regarding the retirement benefits of members of the Retirement System. For the reasons which follow, it is our opinion that, other than the names of members of the Retirement System, which we have previously advised you are subject to public disclosure, information regarding the retirement benefits of members of the Retirement System is exempt from disclosure under RSA 91-A:5.

Under the Right-to-Know Law, an agency must disclose all public records requested by any citizen, RSA 91-A:4, unless the information sought falls within a specific statutory exemption. RSA 91-A:5 provides that, among other things, "confidential, ... or financial information" and "personnel, medical, ... and other files whose disclosure would constitute an invasion of privacy" are exempted from disclosure. Records concerning the members of the Retirement System fall within these exempt categories and are accordingly not subject to RSA 91-A disclosure.

As the New Hampshire Supreme Court recently stated in *Union Leader Corp. v. City of Nashua*, 141 N.H. \_\_\_\_ (1996)(slip opinion dated December 5, 1996):

When we review exemptions from the Right-to-Know Law, we balance the public interest in disclosure of the requested information against the government interest in non-disclosure, and in privacy exemption cases, the individual's privacy interest in non-disclosure. See e.g., *Chambers v. Gregg*, 135 N.H. 478, 481 (1992); *Mans v. Lebanon School Bd.*, 112 N.H. 160, 162 (1972). When the exemption is claimed on the ground that disclosure would constitute an invasion of privacy, we examine the nature of the requested document or material and its relationship to the basic purpose of the Right-to-Know Law.

*Id.* slip op. at p. 3.

The purpose of the Right-to-Know Law is to provide the utmost information to the public about what its government is up to. *Id.* slip op. at pp. 3-4. In order to determine whether the records of individual members of the Retirement System must be disclosed, the privacy interest in non-disclosure must be weighed against the public interest in the release of the records in order to determine whether, on balance, disclosure would be an invasion of privacy. In order to perform this balancing, it is necessary to determine the extent of the interference with privacy that would be caused by the disclosure of the records of individual members of the Retirement System.

That interest is significant. As you have pointed out, when a person retires, the benefit that person elects depends upon that individual's particular and personal family and financial situation. Moreover, there are circumstances in which the benefit is impacted by a spousal separation agreement, a divorce decree, or other judicial action. Furthermore, there are many members of the Retirement System who

are under a disability retirement. It is plain that the privacy concerns of individual retirees in protecting this information from disclosure are significant.

In determining the public interest, the United States Supreme Court in *U.S. Dept. of Justice v. Reporters Committee*, 489 U.S. 749, 771 (1989), held that it is necessary to examine the nature of the requested document and its relationship to the basic purpose of the federal Freedom of Information Act to open agency action to the light of public scrutiny. The New Hampshire Supreme Court, in *Union Leader*, agreed with the United States Supreme Court's observation in *Reporters Committee* that

[o]ffered information that sheds light on an agency's performance of its statutory duties falls squarely within th[e] purpose [of the FOIA]. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. In [the *Reporters Committee*] case - and presumably in the typical case in which one private citizen is seeking information about another - the requests [did] not intend to discover anything about the conduct of the agency that has possession of the requested records. Indeed, response to [the *Reporters Committee*] request would not shed any light on the conduct of any government agency or official. *Reporters Committee*, 489 U.S. at 773.

*Union Leader Corp. v. City of Nashua*, slip op. at pp. 4-5.

The argument that individual members' records should be released because disclosure of the records would inform the public of where its money is going was rejected in *National Association of Retired Federal Emp. v. Horner (NARFE)*, 879 F.2d 873 (D.C. Cir. 1989), cert. denied, 108 L.Ed.2d 936 (1990). In that case, the Court held that records of retired and disabled federal employees were exempt from disclosure because the records fell within one of the exemptions of the Freedom of Information Act, which provides that an agency shall not disclose certain records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552 (b)(6). The NARFE Court determined that unless the public would learn something directly about the workings of the government by the disclosure of the individual records of federal annuitants, their disclosure is not compelled by the public interest. It stated that "[t]he simple fact is that [the records of individual annuitants] say nothing of significance about 'what the [ ] Government is up to.'" *Id.* at 879. We agree with the reasoning of the NARFE Court. Disclosure of the records of individual members of the Retirement System would not shed any significant light on the State's conduct.

In sum, because under the test enunciated by the New Hampshire Supreme Court there is no significant public interest in disclosure, when balanced against a significant privacy interest against disclosure of the records of individual members of the Retirement System, , those records are exempt from disclosure under RSA 91-A:5,IV.

Please do not hesitate to contact me should you have any additional questions or if I may be of further assistance.

Very truly yours,

Steven M. Houran  
Acting Attorney General

SMH/p