



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

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File No. 02-009

PUBLIC RECORDS:
State Board of Elections'
Voter Registration Database
as a Public Record Exempt
from Disclosure Under the
Freedom of Information Act

Mr. Ronald D. Michaelson
Executive Director
Illinois State Board of Elections
1020 South Spring Street
P.O. Box 4187
Springfield, Illinois 62708

Dear Mr. Michaelson:

I have your letter wherein you inquire whether the voter registration database maintained by the State Board of Elections is a public record which is exempt from disclosure under the provisions of subsection 7(1)(a) of the Freedom of Information Act. (5 ILCS 140/7(1)(a) (West 2001 Supp.), as amended by Public Act 92-645, effective July 11, 2002, and Public Act 92-651, effective July 11, 2002.) For the reasons hereinafter stated, it is my opinion that the voter registration database

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is not exempt from disclosure under subsection 7(1)(a) of the Freedom of Information Act.

Based upon the documents submitted with your opinion request, it appears that on June 28, 2002, Geoff Dougherty, Database Editor for the Chicago Tribune newspaper, submitted, pursuant to the provisions of the Freedom of Information Act (5 ILCS 140/1 et seq. (West 2000)), a request to the State Board of Elections for a "* * * [c]opy of all records contained in the Board's statewide voter registration database[, together with] any record layouts, codebooks or other documentation that apply to this database." On July 1, 2002, Dianne Felts, Director of Voting Systems and Standards for the State Board of Elections, denied Mr. Dougherty's request citing the provisions of subsection 7(1)(a) of the Freedom of Information Act. Mr. Dougherty filed an appeal from the denial of his request, and the State Board of Elections has requested our review of its staff's conclusions. In accordance therewith, you have inquired whether the voter registration database maintained by the State Board of Elections is exempt from disclosure on the basis cited.

The principal mandate of the Freedom of Information Act is found in subsection 3(a) of the Act (5 ILCS 140/3(a) (West 2000)), which provides that "* * * [e]ach public body shall make available to any person for inspection or copying all public

records, except as otherwise provided in Section 7 of this Act." As used in the Freedom of Information Act, the terms "public body" and "public records" are respectively defined as follows:

" * * *

(a) 'Public body' means any legislative, executive, administrative, or advisory bodies of the State, state universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees, or commissions of this State, any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, * * *.

* * *

(c) 'Public records' means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, recorded information and all other documentary materials, regardless of physical form or characteristics, having been prepared, or having been or being used, received, possessed or under the control of any public body. * * *

* * *

(Emphasis added.) (5 ILCS 140/2(a), (c) (West 2001 Supp.), as amended by Public Act 92-547, effective June 13, 2002 and 92-651, effective July 11, 2002.)

It is not disputed that the State Board of Elections is a "public body", as that term is defined in the Freedom of Information Act, or that the database is a "public record[]"

within the definition of that term. Consequently, section 3 of the Freedom of Information Act requires that the database be made available for inspection and copying, except to the extent that disclosure may be exempted under section 7 of the Act.

Section 7 of the Freedom of Information Act currently contains some thirty-seven exemptions to the mandate that public records be made available for public inspection. The Board's staff has cited subsection 7(1)(a) of the Act as the basis for denying the request for access to the voter registration database. Subsection 7(1)(a) of the Act provides:

" * * *

(1) The following shall be exempt from inspection and copying:

(a) Information specifically prohibited from disclosure by federal or State law or rules and regulations adopted under federal or State law.

* * *

(Emphasis added.)

The primary purpose of statutory construction is to ascertain and give effect to the intent of the General Assembly. (In re Marriage of Kates (2001), 198 Ill. 2d 156, 163.) Legislative intent is best evidenced by the language used in the statute. (Yang v. City of Chicago (2001), 195 Ill. 2d 96, 103.) Where statutory language is clear and unambiguous, it must be

given effect as written. In re Consolidated Objections to Tax Levies of School District No. 205 (2000), 193 Ill. 2d 490, 496.

Subsection 7(1)(a) of the Act exempts from disclosure "[i]nformation specifically prohibited from disclosure * * *" under Federal or State law. The Board's staff has not referenced any Federal provisions as prohibiting disclosure. Rather, it has stated that sections 4-8, 5-7 and 6-35 of the Election Code (10 ILCS 5/4-8, 5-7, 6-35 (West 2001 Supp.)) cumulatively prohibit the disclosure of the State's voter registration database.

Sections 4-8, 5-7 and 6-35 of the Election Code respectively address the registration of voters in counties having a population of less than 500,000, in counties having a population of 500,000 or more, and in certain cities, villages and incorporated towns that have boards of election commissioners. Section 4-8 of the Election Code, the provisions of which are substantially similar to those of sections 5-7 and 6-35 of the Election Code, provides, in pertinent part:

"The county clerks shall provide a sufficient number of blank forms for the registration of electors, which shall be known as registration record cards and which shall consist of loose leaf sheets or cards, of suitable size to contain in plain writing and figures the data hereinafter required thereon or shall consist of computer cards of suitable nature to contain the data required thereon. The registration record cards, which shall include an affidavit of registra-

tion as hereinafter provided, shall be executed in duplicate.

The registration record card shall contain the following and such other information as the county clerk may think it proper to require for the identification of the applicant for registration:

Name. * * *

Sex.

Residence. * * *

* * *

Nativity. * * *

Citizenship. * * *

Date of application for registration,
* * *.

Age. * * *

Physical disability of the applicant, if any, at the time of registration, which would require assistance in voting.

The county and state in which the applicant was last registered.

Signature of voter. * * *

Signature of deputy registrar or officer of registration.

* * *

The registration cards shall be deemed public records and shall be open to inspection during regular business hours, except during the 28 days immediately preceding any election. * * * Registration record cards

may also be inspected, upon approval of the officer in charge of the cards, during the 28 days immediately preceding any election. Registration record cards shall also be open to inspection by certified judges and poll watchers and challengers at the polling place on election day, but only to the extent necessary to determine the question of the right of a person to vote or to serve as a judge of election. * * *

Updated copies of computer tapes or computer discs or other electronic data processing information containing voter registration information shall be furnished by the county clerk within 10 days after December 15 and May 15 each year to the State Board of Elections in a form prescribed by the Board. Registration information shall include, but not be limited to, the following information: name, sex, residence, telephone number, if any, age, party affiliation, if applicable, precinct, ward, township, county, and representative, legislative and congressional districts. * * * The Board shall furnish copies of such tapes, discs, other electronic data or compilations thereof to state political committees registered pursuant to the Illinois Campaign Finance Act or the Federal Election Campaign Act at their request and at a reasonable cost. Copies of the tapes, discs or other electronic data shall be furnished by the county clerk to local political committees at their request and at a reasonable cost. * * * The individual representing a political committee requesting copies of such tapes shall make a sworn affidavit that the information shall be used only for bona fide political purposes, including by or for candidates for office or incumbent office holders. Such tapes, discs or other electronic data shall not be used under any circumstances by any political committee or individuals for purposes of commercial solicitation or other business purposes. If such

tapes contain information on county residents related to the operations of county government in addition to registration information, that information shall not be used under any circumstances for commercial solicitation or other business purposes. The prohibition in this Section against using the computer tapes or computer discs or other electronic data processing information containing voter registration information for purposes of commercial solicitation or other business purposes shall be prospective only from the effective date of this amended Act of 1979. Any person who violates this provision shall be guilty of a Class 4 felony.

* * *

"

(Emphasis added.)

Clearly, the registration record cards from which the voter registration database is created are public records open to inspection by the public. It is equally clear that the General Assembly has enacted express limitations upon the use of information contained in electronic voter records. Although the statutes cited expressly prohibit political committees or individuals from "* * * using the computer tapes or computer discs or other electronic data processing information containing voter registration information for * * * commercial solicitation or other business purposes," sections 4-8, 5-7 and 6-35 of the Code do not "specifically prohibit" the disclosure of the electronic voter registration records to the public.

It has also been suggested that section 1A-15 of the Election Code (10 ILCS 5/1A-15 (West 2000)) prohibits the disclosure of electronic voter registration records. Section 1A-15 of the Code provides:

"On the request of the Illinois Department of Public Aid, the State Board of Elections shall provide the Department with tapes, discs, other electronic data or compilations thereof which only provide the name, address and, when available, the Social Security number of registered voters for the purpose of tracing absent parents and the collection of child support. Such information shall be provided at reasonable cost, which shall include the cost of duplication plus 15% for administration. The confidentiality of all information contained on such tapes, discs and other electronic data or combination thereof shall be protected as provided in Section 11-9 of 'The Illinois Public Aid Code'." (Emphasis added.)

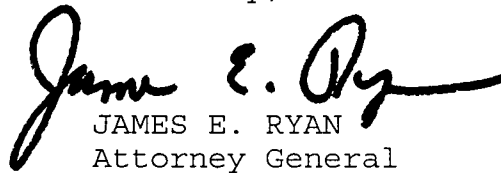
Section 11-9 of the Illinois Public Aid Code (305 ILCS 5/11-9 (West 2001 Supp.)) generally prohibits the disclosure of records, files, papers and communications in the possession of the Department of Public Aid relevant to applicants for, and recipients of, financial assistance.

Under the language of subsection 1A-15 of the Election Code, the State Board of Elections is expressly authorized to share certain information from electronic voter registration records with the Department of Public Aid for the purpose of tracing absent parents and collecting child support. Among that

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information that the State Board of Elections is expressly authorized to share are the social security numbers of registered voters. Because of the nature of such information and the use to which it is being placed, the General Assembly has apparently determined that the protections afforded in the Public Aid Code (305 ILCS 5/1-1 et seq. (West 2000)) should be extended to the information provided to the Department of Public Aid by the State Board of Elections. Nothing in section 1A-15 of the Election Code or in section 11-9 of the Public Aid Code, however, "specifically prohibits" the State Board of Elections from providing public access to its voter registration database. Consequently, it is my opinion that the State Board of Elections' voter registration database is not exempt from disclosure pursuant to the provisions of subsection 7(1)(a) of the Freedom of Information Act.

Sincerely,


JAMES E. RYAN
Attorney General