TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-705
of	:	JULY 10, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Ronal M. Weiskopf Deputy Attorney General	:	

The Honorable Walter G. Farr, Jr., Executive Director, California Housing. Finance Agency, has requested an opinion on a question that has been rephrased as follows:

Is the California Housing Finance Agency required by the California Public Records Act or prohibited by the Information Practices Act of 1977 from providing the Carpenter Funds Administrative Office with the name, social security number, hourly wage, deductions from salary, trade of, and total number of hours worked by each carpenter employed on a project which the California Housing Finance Agency finances?

CONCLUSION

The California Housing Finance Agency is neither required by the California Public Records Act nor prohibited by the Information Practices Act of 1977 from providing the Carpenter Funds Administrative Office with the name, social security number, hourly

wage, deductions from salary, trade of, and total number of hours worked by each carpenter employed on a project which the California Housing Finance Agency finances.

ANALYSIS

The California Housing Finance Agency (hereinafter, the "Agency" of "CHFA") is "a public instrumentality and a political division of the state within the Business and Transportation Agency." (Health & Saf. Code, § 50900; *cf. id*., § 50054.) Its primary purpose is "to meet the housing needs of persons and families of low or moderate income." (*Id*., § 50950; *cf. California Housing Finance Agency v. Elliott* (1976) 17 Cal. 3d 575, 580, 583–585, 593.) Toward meeting its enumerated objectives (*Cf. id*., § 50952), the Agency is empowered, inter alia, to "make . . . development loans, construction loans, mortgage loans, and neighborhood improvement loans to housing sponsors to finance housing developments . . ." (*Id*., §§ 51054, 51100), and to make loans to qualified mortgage lenders for their making construction loans and mortgage loans to finance housing developments. (*Id*., § 51150.) Such loans are financed with bond monies raised through *private* sources. The Agency is required to adopt regulations for its review of construction contracts for the construction or rehabilitation of housing financed by a construction or under the Zenovich-Moscone-Chacon Housing and Home Finance Act (i.e., Health & Saf. Code. Div. 31, §§ 50000–51900), and is mandated to require, inter alia, that "all workmen employed in such construction, exclusive of maintenance work, [are] paid not less than the general prevailing rate or per diem wages for work of a similar character in the locality in which the construction is performed, and not less than the prevailing rate of per diem wages for holiday and overtime work." (*Id*., § 50953; *cf*. § 50000.) In fulfilling that charge the Agency requires that "prior to its execution, each contract between a housing sponsor and a prime contractor for construction or rehabilitation of housing financed by a construction loan from the agency or from a qualified mortgage lender . . . be submitted by the housing sponsor to the agency for review and approval." (25 Cal. Admin. Code, § 11301.) A contract will be approved for execution only if it complies with all laws and regulations relating to, among other things, prevailing wage rates for the particular craft, classification or type of work involved. (*Ibid*.; see also *id*., § 11302.)

The Agency is also charged with attaining "[f]ull utilization of federal subsidy assistance for the benefit of persons and families of low or moderate income . . ." (*id*., § 50952, subd. (j)) and is designated *primus inter pares* "a state representative for purposes of receiving and allocating financial aid and contributions from agencies of the federal government . . . provided . . . for . . . subsidizing housing for persons and families of low or moderate income . . . ." (*Id*., § 51051.) Toward that end the Agency is empowered to "enter such agreements and perform such acts as are necessary to obtain federal housing subsidies for use in connection with housing developments . . ." (*id*., § 51050, subd. (p); see also *id*., § 51050, subd. (j) (general power to contract).) Such federal subsidies are

available, for example, under the United States Housing Act of 1937 as amended. (Act, Sept. 1, 1937, ch. 896, § 1, as added by P.L. 93–383, § 201(a), 88 Stats. 662 and as amended and recodified, 42 U.S.C.A. § 1437 *et seq*.) In order to aid lower income families in obtaining a decent place to live and to promote economically mixed housing, section 8 of that Act (now found at 42 U.S.C.A. § 14370 authorizes the Secretary of Housing and Urban Development (HUD) (*id*., § 1437a(8)) to enter into annual assistance contracts with public housing agencies pursuant to which they in turn may enter into contracts to make assistance payments to owners of existing, newly constructed and substantially rehabilitated housing (dwelling units). CHFA, as a "public housing agency"—i.e., a "state . . . or other governmental agency or public body (or agency or instrumentality thereof) . . . authorized to engage in or assist in the development or operation of low-income housing" (*id*., § 1437a(6))—has entered into such "housing assistance payments" contracts or "HAP contracts" with HUD to secure section 8 funds, and most of its work is done in conjunction with this section 8 post-construction assistance.[1] By terms of the Act, however, all such contracts for loans, annual contributions, sale, or lease must:

> "[C]ontain a provision requiring that not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development, and all maintenance laborers and mechanics employed in the operation, of the low-income housing project involved; and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics employed in the development of the project involved (*including a project with nine or more units assisted under section 1437f of this title*, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract." (*Id*., § 14371.)

In order to receive federal subsidy assistance under a HAP contract, CHFA is thus required to certify that the provisions of the Davis-Bacon Act regarding payment of "prevailing

[1] Assistance funds available under section 8 are obtained and applied after construction is completed to moderate rents by helping to pay the mortgage on the project. (See, e.g., tit. 24, C.F.R. § 883 202) Monies for construction itself is secured through the issuance of bonds to private parties by the Agency, and in so doing the Agency need not comply with the provisions of any other law regarding their issuance. (Health & Saf. Code. § 50953.)

wages" have been and are being complied with during construction with respect to workers on a project to be assisted.[2] (See also 24 C.F.R., pt. 883.) To make that certification, that is, to continuously verify that the prevailing wage is actually being paid to workers involved and that only lawful deductions are being withheld from their pay, the Agency requires that the payroll records of a developer's contractor be submitted (Payroll Record Form WH-347) on a weekly basis with a listing of the name, address, social security

---

[2] The Davis-Bacon Act referred to is the Act of March 3, 1931, chapter 411, 46 Statutes 1494, as amended, and is classified generally to sections 276a to 276a-5 of title 40, United States Code, Public Buildings, Property, and Works. "It has been characterized as a remedial statute enacted to protect construction employees on contracts subject to its provisions from being forced to accept substandard wages as a condition of employment. *U.S. v. Morley Construction Co*. 98 F 2d 781, 788 (1938)." (54 Ops. Cal. Atty. Gen. 31, 32 (1971).)

As we have noted before

> "The Davis-Bacon Act does not require a specific minimum wage to be paid, but requires that the specifications for every construction contract in excess of $2,000 require the contractor and his subcontractors to pay their laborers and mechanics no less than the prevailing wage, as determined by the Secretary of Labor, prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the state in which the work is to be performed 40 U.S.C. § 276a (1964)." (54 Ops. Cal. Atty. Gen. *supra* at p. 32.)

Under the terms of the Act, wages includes (1) the basic hourly rare of pay and with some exception. (2) the amount of:

> "(A) *the rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program, and*
>
> "(B) the rare of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry our a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.
>
> *"for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits*, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits . . ." (40 U.S.C.A. § 276a.)

For a listing of other federal statutes which have incorporated the Davis-Bacon Acts's "prevailing wage" requirements see title 29, C.F.R. § 1.1., appendix A, and *cf*. 54 Ops. Cal. Atty. Gen., *supra*, at pages 31, 32, footnote 1.

number, correct classification, rates of pay (including rates of contributions or costs of anticipated contributions), the daily and weekly number of hours worked and the deductions made (i.e., federal taxes, state taxes, OASDI/FICA, SDI and benefits, vacation pay) and actual wages paid for each employee. (See Agreement to Enter into Housing Assistance Contract (§ 8 Housing Assistance Program, State Housing Agencies, U.S. Dept. of Housing and Urban Development, form HUD-52644B (8–80)) §§ 2.10, 2.11 and Payroll Records Form WH-347; *cf*. Lab. Code, § 1776, subds. (a), (b)(2)).)

That or similar information also enables the Agency to monitor its requirement under section 50953 of the Health and Safety Code that the wages of workers employed on construction projects financed by construction loans from the Agency under the Zenovch-Moscone-Chacon Housing and Home Finance Act be on a par with that paid for work of a similar character in the locality. (Health & Saf. Code, § 50953.)

We are presented with the following situation: The Carpenter Funds Administrative Office of Northern California (CFAO) has requested that the Agency provide them with the payroll records containing the name, social security number, trade and total hours worked and deductions taken by carpenters employed on projects which the Agency has given a construction loan.[3] We are asked whether disclosure of the information

[3] The Carpenter Funds Administrative Office is the trust repository for the unions fringe benefit funds monies. It professes a need for the information to determine if the proper amount of fringe benefit contributions is being paid for carpentry work done on those Agency financed projects. We understand that a determination as to whether the proper amount of fringe benefits was being paid could be made solely from the total number of hours worked on the jobsite by all employees. Similar requests, we are told, are received from other labor organizations. We are also told that many of the requests, as the one by CFAO, are made pursuant to section 1776 of the Labor Code which provides that a body awarding a contract for public work or, construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds") (Lab Code, § 1720, subd. (a)), must honor a public request for inspection and copying of payroll records it receives from contractors doing public works showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week; and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the public work, *but* with the individuals name, address and social security number marked or obliterated to prevent their disclosure. (Lab. Code, § 1776, subd. (d).) CHFA, however, is *sui generis*, and is specially exempted from the requirements of section 1776 by section 50953 of the Heath and Safety Code providing:

> "*This division shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws* . . . and in the construction or acquisition of a housing development or a residential structure pursuant to the provisions of tins division, the agency need not comply with the requirements of any

is compelled by the California Public Records Act (Gov. Code, tit. 1, div. 7, ch. 3.5, § 6250 *et seq*.) or is permitted by the California Information Practices Act of 1977. (Civ. Code, tit. 1.8, ch. 1, § 1798 *et seq*.) We conclude that disclosure of the information is neither required by the former Act nor prohibited by the latter.

The California Public Records Act

We turn first to the California Public Records Act. By its enactment, the Legislature sought to strike a balance between "the right of individuals to privacy," i.e., their right "to be let alone," and the fundamental and necessary right of every person in this state to "access to information concerning the conduct of the people's business," i.e., the people's right to know." (Gov. Code, § 6250; see also *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 651–652.) In other words, its "objectives . . . include preservation of islands of privacy upon broad seas of enforced disclosure." (*Black Panther Party v. Kehoe*, *supra*, at p. 653.) The Act basically provides that, except as otherwise provided therein, public records—i.e., "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (*id*., § 6252, subd. (d))[4] are to be open to inspection at all times during the office hours of those agencies. (*Id*., § 6253, subd. (a).) (See 63 Ops. Cal. Atty. Gen. 45, 47 (1980); 62 Ops. Cal. Atty. Gen. 436, 437 (1979); 58 Ops. Cal. Atty. Gen. 84, 85 (1975); 53 Ops. Cal. Atty. Gen. 136, 143, 148 (1970).) Any person may receive a copy of any identifiable public record upon request (*id*., § 6356) and payment of a prescribed fee. (*Id*., § 6257.) While the general legislative policy behind the Act favors disclosure (§ 6350, subd. (a); *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 942; *Cook v. Craig* (1976) 55 Cal. App. 3d 773, 781; 53 Ops. Cal. Atty. Gen. 136, 144 fn. 7 (1970)), the Act also evidences a legislative policy that is mindful of individual privacy (§ 6250) which warrants equal consideration when applying the Act to a particular situation. (*Cf. Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at p. 653; *cf. id*., at pp. 65 1–652.)

---

other law applicable to construction or acquisition of public works, except as specifically provided in this division." (Health & Saf. Code, § 50953.)

Requests made to it pursuant to Labor Code section 1776 are therefore not soundly based.

[4] "State agency" is defined to mean "every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution." (*Id*. § 6252, subd. (a).) "Local agency" is defined to include a county, city, whether general law or chartered, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (*Id*., § 6252, subd. (b).)

The California Public Records Act thus forms "an area of confluence for the conflicting demands of public exposure and personal privacy" (*Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at p. 652) and it recognizes both in its mechanisms for determining disclosure under which "the right of privacy . . . [is] balanced against public interest in the dissemination of information demanded by democratic processes. (*Id*., at pp. 651–652; fn. omitted.) For example its section 6254 provides that the Act is not to be construed to require disclosure, inter alia, of records that are:

> "(c) Personnel, medical or similar files which would constitute an *unwarranted* invasion of personal privacy."

The ultimate sentence of that section, however, provides that "[n]othing [therein] is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law." (§ 6254.) This has been interpreted as endowing an agency "with discretionary authority to override any of the 14 statutory exemptions [contained in § 6254] when some *dominating public interest* favors disclosure. (*Black Panther Party v. Kehoe*, *supra*, at p. 656; accord *Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d at p. 941.) With similar weighing of interests, section 6255 provides that:

> "[An] . . . agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of [the Act] . . . or that on the facts of the particular case *the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.*"

In either case, of course, where the public interest in disclosure appropriately prevails, disclosure follows. (§ 6253, subd. (a); *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at pp. 656, 657; *Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d at p. 941.) The information at issue involves the names, hourly wages, deductions from salary, social security numbers, and trades of all carpenters who may have worked on California Housing Finance Agency projects and the total number of hours that they worked. Does the California Public Records Act compel its disclosure?

We consider the California Finance Housing Agency to be a "state agency" within the meaning of Government Code section 6253, subdivision (a) (*id*., 5 6252, subd. (a), *supra*, at fn. 3; Health & Saf. Code, § 50900; *cf*. 58 Ops. Cal. Atty. Gen. 629, 632 (1975) ("public instrumentality" a "state agency" within the meaning of the California Public Records Act)), and its maintenance of the requested information, albeit involving private data, to be a "public record" within the meaning of section 6252, subdivision (d), for it is "used or retained [by the agency] for the conduct of the public's business" in

fulfilling its general mandate under Health and Safety Code sections 50950 and 50952 and its specific charges under sections 50953 (to ensure parity of prevailing wages for persons working on construction financed by a construction loan under the Zenovich-Moscone-Chacon Housing and Home Finance Act) and 51050 (to do the same with respect to Davis-Bacon as necessary to obtain "section 8" federal housing subsidies in line with 42 U.S.C.A. §§ 1437a(6), 1437j).

We first address whether the information requested comes within the exemption from public disclosure found in section 6254, subdivision (c). That subdivision, as we have seen, provides that the California Public Records Act is not to be construed to require disclosure of "[p]ersonnel, medical or similar files, the disclosure of which would constitute *an unwarranted* invasion of privacy." The ordinary and usual meaning of the adjectival participle "unwarranted," which we must accord its use in subdivision (c) (*People* v. *Belleci* (1979) 24 Cal. 3d 879, 884), is that of something "not being justified in light of the surrounding circumstances." (*Cf.* Webster's New Internat. Dict. (1971 ed.) pp. 2502, 2514.) We believe that by using the term in the subdivision to describe the type of "invasion of personal privacy" the disclosure of files was not intended to create, the Legislature intended to establish a balancing test to determine the propriety of the records being disclosed, or whether the records in question should be exempt under subdivision (c). We perceive that test to involve weighing "the degree of invasion of privacy" against "the public interest served by disclosure" mentioned in section 6255 and subsumed in the ultimate sentence of section 6254. (*Cf. Black Panther Party*, *supra*; *Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d 931.) As we said in a former opinion:

> "Subsection (c) of section 6254 is . . . the point of impact between two strong policies: The right of the people of access to information concerning the conduct of the people's business (see § 6250). and the individual's right to privacy [which includes "*freedom from public disclosure of private facts*"]. In fact, section 6250 itself notes that the Legislature is 'mindful' of the right. As a general rule, such policy collisions are resolved by *striking a balance* between them in the manner that many cases involving privacy and free press have done." (53 Ops. Cal. Atty. Gen. 136, 145 (1970); emphases added; *cf.* Prosser, *Law of Torts*, 5112 (3rd ed. 1964) cited therein.)

In determining whether the records' types of information sought are exempt under subdivision (c), we therefore proceed along that line to undertake the balancing required, being ever mindful that we are dealing with payroll records containing the names, social security numbers, trades (classifications), and deductions from salaries of, and total number of hours worked by *nongovernmental* employees working for *private* individuals on *private* construction, for as was observed in *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d 645, while reports and returns of personal data supplied by private citizens

"may fall within the spotlight of disclosure needs," the public "right to know" applies with less force with respect to that information. (42 Cal. App. 3d at pp. 652, 655.)

Careful not to lose sight of the forest for the trees, we find that the totality of items of information sought involves particularly sensitive matters which are deserving of confidentiality:

While in many cases the privacy interest in one's name (*cf*. *Lehman v. City and County of San Francisco* (1978) 80 Cal. App. 3d 309, 313 (status as a prospective juror)) and even trade (*cf*. 63 Ops. Cal. Atty. Gen. 46, 48 (1980) (names of real estate license applicants)) may be minimal, disclosure of those factors from CFHA records would reveal that a person is working or had worked on a certain private project in a particular capacity. That information is somewhat more personal, and the disclosure of the name and trade takes on a different complexion in that context. And, while it is true that the same information might be obtained from other sources, that accessibility does not detract from its private nature vis-a-vis the Agency's system. (27 Ops. Cal. Atty. Gen. 267, 270 (1956).) In this vein we are reminded of Labor Code section 1776, subdivision (d) wherein the Legislature has been solicitous of protecting the privacy of the names of workers whose payroll information is amenable to public inspection in connection with their employment on "public works projects." (See fn. 3, *ante*.) Furthermore, we are not dealing with public or quasi-public figures, with governmental employees, or with matters connected with the fitness of individuals to engage in activities for which a license is necessary. (53 Ops. Cal. Atty. Gen., *supra*, at pp. 145–146 (pilots' files); see also 62 Ops. Cal. Atty. Gen. 595, 600 (sheriff's records of application for concealed firearm permits).) Instead, we are dealing with private citizens engaged in private enterprise. Although a (contractor's) license may be necessary for some of them to perform their jobs, their fitness to have that license is not in question. As we observed before:

> "As the information bears more remotely on the question of qualifications or performance, and as it by its personal nature becomes more likely to be regarded as intrusive or embarrassing by its disclosure, the probability of its confidential nature increases." (*Id*., at pp. 146–147.)

(See also *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d 645.) We thus seriously question whether the names and trades of the carpenters in this context are "the subject of a legitimate interest to [their] fellow citizens" (53 Ops. Cal. Atty. Gen., *supra*, citing Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890) at pp. 215–216) and whether in balance they should be disclosed.

The *wages paid* to and *hours worked* by the individual carpenters whose identities are revealed are especially personal bits of information that are similar to that

kept in a "personnel file." While it is necessary for the Agency to have that information to perform its duty to ascertain that prevailing wages are being paid, it does not follow that the public interest in disclosure of that information outweighs the carpenter's right to privacy therein. An individual has a particular right of privacy in his financial affairs: information in one's federal (26 U.S.C.A. §§ 6103(a)(2), 7213(a) and (b); *Association of Am. Railroad v. U.S.* (D.D.C. 1974) 371 F. Supp. 114, 117; *Wilson v. Superior Court* (1976) 63 Cal. App. 3d 825, 828) and state (Rev. & Tax. Code, § 19282; *Webb v. Standard Oil Co.* (1957) 49 Cal. 509, 512, & p. 512, fn.) income tax returns is protected from disclosure, and one's bank cannot reveal one's financial data absent compulsion by legal process (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal. 3d 652, 657; see also *Burrows v. Superior Court* (1974) 13 Cal. 3d 238, 243.) Furthermore, it must again also be remembered that the wages and hours in question are not those of public employees and as we have seen do not involve payment with the type of funds where the public's legitimate interest in disclosure would be greater. (See, e.g., *California Housing Finance Agency v. Elliott*, *supra*, 17 Cal. 3d at pp. 587–588 with, e.g., 62 Ops. Cal. Atty. Gen. 436, 439 (1979) (State Treasurer's records specifying the owner of state registered bonds); 60 Ops. Cal. Atty. Gen. 110, 113 (1977) (records of fact of and amount of a former county employee's retirement benefits and names); 25 Ops. Cal. Atty. Gen. 90, 91 (controller's records of fact of and amount of former state employee's retirement allowance" no less open to the public's gaze than the income of any active state officer or employee").) With respect to the payroll records of the private employees with whom we are concerned, we find that the balance weighs in favor of exemption from disclosure under subdivision (c).

The proliferating use of a person's social security number has become the focus of a national debate on personal privacy (Sen. Report No. 90–1183; 1974 U.S. Code Cong. & Ad. News 6916, 6943–6944)[5] and has prompted the enactment of section 7 of the

[5] "The Committee [on Government Operations] realizes that the number is a major element in the national debate over privacy since a common numerical identifier or symbol to designate and index each person is an essential feature of a national data bank, or indeed, of any information system which allows creation of an instant dossier or which permits quick retrieval of all personal information which flows through that system about an individual.

> "In recent years the Social Security number has been the identifier most used in common by government agencies and private organizations to improve efficiency of services, and management functions, prevent fraud and reduce errors in identification of people.
>
> "Citizens' complaints to Congress and the findings of several expert study groups have illustrated a common belief that a threat to individual privacy and confidentiality of information is posed by such practices. The concern goes both to the development of one common number to label a person throughout society and to the fact that the symbol most in demand is the Social Security number, the key to one government dossier.

Federal Privacy Act of 1974 to redress that development. (*Id*., at pp. 6943–6946.) That section prohibits federal, state or local agencies from denying rights, benefits or privileges to any individual because of a refusal to disclose his social security number, unless required by federal statute (P.L. 93–579, § 7, subds. (a)(1), (a)(2); 5 U.S.C. § 552a note), and requires any agency requesting a disclosure to "inform the individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it." (*Id*., § 7, subd. (B).) Thus while a person may have to disclose a social security number for some purposes (e.g., to receive aid to families with dependent children (*McElrath v. Califano* (7th Cir. 1980) 615 F.2d 434, 441; *Mullaney v. Woods* (1979) 97 Cal. App. 3d 710, 719, 721 fn. 12, 727), it remains nonetheless clothed with some degree of personal privacy). (*Cf*. The Privacy Act of 1974, P.L. 93–579, § 7(a)(1); 5 U.S.C. § 552a note.) Indeed here too the cognate situation found in Labor Code section 1776, subdivision (d) is instructive: whereas payroll records of employers working on public works are made amenable to public inspection, the Legislature has forcefully demanded that the individuals' social security numbers (and names and addresses) be marked or obliterated to prevent disclosure of that information before the records are made available. (See fn. 3, ante.) In the facts of the case presented here, we find no public interest to be served by disclosure of the social security numbers.

Similarly, we feel that disclosure of information about *deductions* that are taken from an individual carpenter's wages would amount to an unwarranted invasion of personal privacy. While amounts of deductions may be arrived at through formulae which are for the most part "standardized," in practice, they are computed on an individualized basis using not only data that we have regarded as personal and deserving of privacy (such as gross salary or wage classification) but also data which is totally unrelated to the carpenters work (such as number of claimed exemptions or marital status) and the disclosure of which serves no public interest. Accordingly, we find that disclosure of the carpenters' deductions would constitute a particularly intrusive invasion into their privacy, without a countervailing public interest served by their disclosure.

In sum, we conclude that when weighed in the balance of section 6254, subdivision (c), disclosure of the names, social security numbers, deductions, wages and total number of hours worked by carpenters on Agency financed projects is found wanting, and that that information is exempt from the requirement of disclosure under the California Public Records Act by that subdivision. And while as a general proposition the Agency may have discretion under the ultimate sentence of section 6254 to waive that exemption

---

"Of major content is the possibility that the number may become a means of violating civil liberties by easing the way for intelligence and surveillance uses of the number for indexing or locating the person." (Sen Report No 93–I 183, 1974 U.S. Code Cong. & Ad News., *supra*, at p. 6944.)

and permit disclosure in face of a dominating public interest (*Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at p. 656, *Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d at p. 941), on the basis of the facts presented to us we are unable to find that such an interest exists. (*Cf.* fn. 6, *post*.) Further, we believe the Agency can readily justify withholding the records under section 6255, for as we now shall see, "the public interest served by not making [them] public *clearly outweighs* the public interest served by [their] disclosure."

Government Code section 6255, to which we alluded before, provides:

> *"The agency shall justify withholding any record by demonstrating that* the record in question is exempt under express provisions of this chapter or that *on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record."* (Emphases added.)

The section thus also establishes a balancing test and

> ". . . embodies the common law rule set forth in *Runyon v. Board of Prison Terms and Paroles*, 26 Cal. App. 2d 183 (1938); and *City and County of San Francisco v. Superior Court*, 38 Cal. 2d 156 (1951), which states that an agency may withhold information by demonstrating that the public interest in preserving confidentiality clearly outweighs the public interest in the general policy of disclosure." (53 Ops. Cal. Atty. Gen., *supra*, at p. 148; see also Evid. Code, § 1040, subd. (b)(2) and *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at p. 657.)

Accordingly we must set the balance and weigh the interests.

1. *The Public interest served by not making the record public, i.e., in preserving its confidentiality*, is great. It has been recognized by the Legislatures of both our nation and state that an acute shortage of adequate housing for low income persons existed, and both nation and state have declared it their policy to remedy that condition. (42 U.S.C. 51437; 1974 U.S. Code Cong. & Ad. News 4273, 4273–4275, 4460–4468; Health & Saf. Code, §§ 50001–50006.) Indeed the California Legislature has declared "the attainment of this goal [to be] a priority *of the highest order*" (emphasis added; Health & Saf. Code, § 50002), and has made it the primary purpose of the Agency. (*Id*., § 50950.) (See *also California Housing Finance Agency v. Elliott*, *supra*, 17 Cal. 3d at pp. 583, 585.) It has also recognized that the state had not taken full advantage of federal assistance available in the area (*id*., § 50006) and has sought to change that (*cf. id*., § 50002), by, inter alia, as we have seen, charging the Agency with attaining full utilization of that assistance (*id*., § 50952, subd. (j)) and empowering it to "enter such agreements and perform such

acts as are necessary to obtain federal housing subsidies for use in connection with housing development." (*Id*., § 51050, subd. (p).)

As we have also seen, Congress has enacted the Davis-Bacon act (40 U.S.C. § 276a *et seq*.) to "protect, construction employees working on contracts subject to its provisions from being forced to accept substandard wages as a condition of employment" (54 Ops. Cal. Atty. Gen. 31, 32, *supra*) and has extended its protection through other federal statutes to construction employees working in other areas as well (tit. 29 C.F.R., § 1.1, append. A; 54 Ops. Cal. Atty. Gen., *supra*, at p. 31, 32, 32 fn. 1; see fn. 1, *ante*) such as the one with which we are concerned herein. (42 U.S.C. § 1437j.) The California Legislature has also enacted a prevailing wage law similar to the Davis-Bacon Act for workers employed on a broad category of public works (Lab. Code, div. 2, pt. 7, art. 2, § 1660 *et seq*.), and although the Agency is not fully subject to all of its provisions (Health & Saf. Code, § 50953; see fn. 3, *ante*) it must nonetheless see to it that prevailing wages will be paid on construction financed by a construction loan from it. (*Ibid*.)

To obtain the desired "section 8" federal assistance, the Agency, as prefatorily noted, must also certify that prevailing wages are paid to workers throughout construction of a covered project (42 U.S.C. § 1437j; 24 C.F.R., pt. 883), and to properly do that, has required in its arrangements with a developer that it will receive weekly payroll records with a listing of the name, address, social security number, classification, rate of pay, number of hours worked, deductions, and acrual wages paid for each employee.

(See HUD Form 52644B (8–80), *supra*, §§ 2.10, 2.11; Payroll Records Form WH-347.)

As we have seen, much of that data is particularly deserving of the protection of an individual's right of privacy and especially more so in its totality, but as we have also just seen, its being obtained by the Agency is particularly necessary to promote a state policy of "the highest priority." As such the public certainly has a compelling interest in having that information be accurately obtained by the Agency. But to ensure that that be the case, the particular private nature of the data must be respected, and its confidentiality protected. As was said regarding the cognate situation involving income tax data:

> "The protection of the data contained in Federal tax returns [which include a person's deductions] is an essential part of our scheme of taxation. Individuals and corporations have the right to expect that information contained in tax returns will not be made available by the government to the public. The policy of confidentiality for income tax data encourages the full disclosure of income by taxpayers in that the individual or corporate taxpayer is assured that his neighbor or competitor will not be apprised of the intimate

details of his financial life." (*Association of Am. Railroads v. United States*, *supra*, 371 F. Supp. at p. 116; fn. omitted.)

So, too, do we perceive it to be with the confidentiality of the data contained in the payroll records the Agency receives, and accordingly we believe that the public interest in maintaining that confidentiality or the public interest served in not making those records public is significant indeed. (*Cf. City of Los Angeles v. Superior Court* (1973) 33 Cal. App. 3d 778, 785–786 (police department personnel records); *Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal. 2d 548, 567–570 (complaints to State Bar); contra, *Uribe v. Howie* (1971) 19 Cal. App. 3d 194, 210–211, 213 (pesticide spray reports filed with county agricultural commissioner); see also Lab. Code, § 1776, subd. (d).)

2. The public Interest served by disclosure pales in comparison. In fact, as we have shown with respect to many of the individual items included (e.g., the deductions and social security numbers), there is no legitimate public interest served at all in having them disclosed to the public's gaze, and with respect to the others (e.g., the names, trades, number of hours worked and wages), whatever public interest exists does not extend to the fitness of the particular carpenter to perform his task, and certainly nor his fitness to perform a public duty or fill a public office.

It has been suggested that a public interest would be served by disclosure of the records, to wit, verifying the correctness of the Agency's determinations that prevailing wages were or were not being paid (including adequate payment of fringe benefits to the unions). Such an interest, however, could be served through less obtrusive means that would not so invade the carpenters' privacy (such as obtaining necessary information from them directly on a random sampling). Besides, we are told, CHFA's monitoring of the Davis-Bacon prevailing wage requirements is already subject to an annual review by HUD to verify compliance. In any event that interest is clearly outweighed by the public interest in not having the records disclosed.

We therefore conclude that when weighed in the balance set by section 6255 the public interest served by not making the payroll records public clearly does outweigh the public interest served by their disclosure such as that might be. (Compare *California Housing Finance Agency v. Elliott*, *supra*, 17 Cal. 3d at pp. 583, 585 with *Uribe v. Howie*, *supra*, 19 Cal. App. 3d at pp. 210–211, 213.) Accordingly the Agency may justify withholding those records from disclosure under section 6253. (*Cf. Berkeley Police Assn. v. City of Berkeley*, *supra*, 76 Cal. App. 3d at p. 941; *Black Panther Party v. Kehoe*, *supra*,

43 Cal. App. 3d at p. 657.) In short, we find that the Agency is not required by the California Public Records Act to provide CFAO with the information requested.[6]

The Information Practices Act of 1977

We were also asked whether the information requested by CFAO is subject to the limitations on disclosure of certain types of information imposed by the California Information Practices Act of 1977 (Civ. Code, tit. 1.8, ch. 1, § 1798 *et seq*.). We conclude that it is not.

Pursuant to the Information Practices Act of 1977 (hereinafter "the I.P.A.") "no [state] agency may disclose any *personal or confidential* information unless the disclosure of such information is [authorized by it]." (*Id*., § 1798.24.) The term "confidential information" is defined by Civil Code section 1798.3, subdivision (a) in a number of ways, each inapplicable to the situation before us. More apropos, the term "personal information" is defined by Civil Code section 1798.3, subdivision (b) to mean "*any information in any record about an individual that is maintained by an agency, including,* but not limited to, *his or her* education, *financial transactions*, medical *or employment history"* and we consider the information requested, including the names of the employees,[7] to fall within *that* rubric. We also consider the California Housing Finance Agency to be an "agency within the meaning of the I.P.A., and its maintenance of the names, trades, hourly wages and hours worked and the individual deductions and social

[6] In so concluding we do not intend to foreclose the Agency from arriving at a different assessment in weighing the interests involved, either by its being cognizant of additional facts or taking another view of those upon which we rely, for the ultimate determination is for the Agency (and a reviewing court) to make. (*Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 656, 657.) Nor do we mean to limit the Agency from devising a method, if reasonably possible, by which some of the records' information might be presented in such a way so as not to be susceptible of identifying any particular individual and thus perhaps tilt the scales in favor of disclosure. (*Northern Cal. Police Practices Project v. Craig* (1979) 91) Cal. App. 3d 116, 123–124; *Rosenthal v. Hansen* (1973) 34 Cal. App. 3d 754, 761.)

[7] We are not unaware of the fact that section 1798, subdivision (c) mentions names of individuals in its definition of "nonpersonal information" to which the Act does not apply. (§ 17982.) The definition, however, provides that they be contained along with "information consisting only of . . . other *limited factual data*" (§ 1798, subd. (c)(d)), and it excludes from its embrace records containing information such as we have here, which are maintained for "statistical" or reporting purposes and are used to make determinations about *identifiable individuals*. (*Id*., subd. (c)(5).)

security numbers of carpentry contractors to come squarely within its definition of "record" (*Id*., subd. (i)).[8]

Subdivision (g) of section 1798.24, however, permits an agency to disclose personal information when "the disclosure of such information is . . . [p]ursuant to the California Public Records Act . . . ." That Act as we have seen contemplates disclosure of that type of information (or information we have deemed sufficiently akin to it) in certain situations when an agency determines the public interest so demands. (Gov. Code, §§ 6253, subd. (a), 6254, 6255; *Berkeley Police Assn. v. City of Berkeley, supra*, 76 Cal. App. 3d at p. 941; *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d at p. 656.) The Information Practices Act thus leaves the matter of whether personal information should be disclosed to a determination to be made by an agency under the California Public Records Act. (See G. Hancock, *California's Privacy Act: Controlling Government's Use of Information?*, (May 1980) 32 Stan. L. Rev. 1001, 1021, & 1021, fn. 64.) indeed in 1979 the Legislature removed a qualification from subdivision (g) under which the I.P.A. prohibited the disclosure of certain personal information which the Public Records Act on balance might have permitted to be disclosed (i.e., "personal information which would clearly be disparaging of or threatening to the reputation or rights of an individual . . ."). (Stats. 1979, ch. 143, p. 560, § 2; see also 63 Ops. Cal. Atty. Gen. 46, 48 (1980); 32 Stan. L. Rev., *supra*, at pp. 1020–1022.) Thus presently, disclosure of any personal information, if made pursuant to the California Public Records Act, is permitted by the I.P.A. *(ibid*.) and its outright prohibition against such being disclosed is not applicable. We therefore conclude that the Information Practices Act of 1977 itself would not prohibit the Agency from disclosing the information requested[9] should it find reason to do so under the Public Records Act. (See fn. 6, *ante*.)

---

[8] "Agency" is defined to include "[e]very state office, officer, department, division, bureau, board, commission, or other state agency, except . . ." (§ 1798.3, subd. (d).) The term record is defined as:

> [A]ny file or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical or employment history and that contains his or her name, identifying number, symbol, or other identifying particular assigned to the individual, including, but not limited to, a finger or voice print or photograph and is maintained by reference to such an identifying particular." (*Id*., subd. (i).)

[9] In view of our conclusion reached through subdivision (g) of section 1798.24 of the I.P.A. we do not address the niceties of its section 1798.75 ("This chapter shall not be deemed to supersede Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code . . .") which may also send us back to the Public Records Act to answer the question of whether disclosure of the requested information is proper. (*Cf*. 64 Ops. Cal. Atty. Gen. 94, 99 (1981).)

The California Housing Finance Agency therefore is neither required by the California Public Records Act not prohibited by the Information Practices Act of 1977 from providing the Carpenters Funds Administrative Office with the name, social security number, hourly wage, deductions from salary, trade of, and total number of hours worked by each carpenter employed on a project which that Agency finances.

*****