TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 83-808
of	:	SEPTEMBER 20, 1984
JOHN K. VAN DE KAMP Attorney General	:	
ANTHONY S. DA VIGO Deputy Attorney General	:	

THE CALIFORNIA STUDENT AID COMMISSION has requested an opinion on the following questions:

1. May the California Student Aid Commission distribute a list of names of students, along with pertinent information as to the status of their loans, who have defaulted or who are delinquent in payments on guaranteed student loans, to schools participating in the State Guaranteed Loan Program in order to enable such schools to assist in the collection process?

2. May the California Student Aid Commission advise a lender participating in the State Guaranteed Loan Program whether an applicant for a guaranteed student loan is in default on a prior student loan?

3. May the California Student Aid Commission advise lenders participating in the State Guaranteed Loan Program of a school's default rate on guaranteed student loans?

CONCLUSIONS

1. The California Student Aid Commission may distribute a list of names of students, along with pertinent information as to the status of their loans, who have defaulted or who are delinquent in payments on guaranteed student loans, to schools participating in the State Guaranteed Loan Program in order to enable such schools to assist in the collection process.

2. The California Student Aid Commission may advise a lender participating in the State Guaranteed Loan Program whether an applicant for a guaranteed student loan is in default on a prior student loan.

3. The California Student Aid Commission may advise lenders participating in the State Guaranteed Loan Program of a school's default rate on guaranteed student loans.

ANALYSIS

This opinion concerns the State Guaranteed Loan Program (Ed. Code, §§ 69760-69779) which has its origin in the federal Higher Education Act of 1965, as extended and amended. (20 U.S.C. §1070 et seq.; 34 C.F.R. § 682; see 64 Ops.Cal.Atty.Gen. 503 (1981).)

One of the purposes of the federal law is to provide low-interest insured loans to students attending institutions of higher learning. (20 U.S.C. § 1071.) This is accomplished by a federal guaranteed student loan program. Generally, a commercial lender (e.g., bank, savings and loan association or credit union) participating in the program will lend money to an eligible student enrolled or accepted for enrollment at an eligible institution. To encourage such loans, the Secretary of Education pays the lender a portion of the interest on the loan and a special allowance equal to a percentage of the average unpaid balance of principal (including capitalized interest) for all such loans the lender holds during a three month period. The student-borrower is obligated on a deferred basis to repay the lender the full amount borrowed plus his or her portion of the interest. The student's repayment obligation is cancelled only if the student dies or becomes totally and permanently disabled or if the loan is discharged in bankruptcy. In such situations the Secretary pays the student's obligation.

A state may participate in the federal program by designating a guarantee agency to insure lenders against default losses. The guarantee agency charges the student-borrower an insurance premium or guarantee fee which is paid into a reserve fund to cover such losses. If the student defaults the lender is paid from the fund and the guarantee agency becomes the holder of the promissory note and responsible for the collection of the debt. The guarantee agency may be reimbursed by the Secretary for part or all its losses in guaranteeing such loans.

In this state, the California Student Aid Commission ("Commission," *post*) has been designated as the guarantee agency. (Ed. Code, § 69761.5.) Lenders participating in the program are insured through the Commission (Ed. Code. § 69765):

> "(a) The commission shall guarantee any student loan made pursuant to this chapter at 100 percent of the amount of the loan.
>
> "(b) The commission shall establish the ratio of reserve funds to loans outstanding."

The Commission, in administering the State Guaranteed Loan Program, maintains a list of names of students who have defaulted on loans. The first inquiry is whether the Commission may distribute the list of names of students, along with pertinent information as to the status of their loans, who have defaulted or who are delinquent in payments on guaranteed student loans to schools participating in the program, in order to enable such schools to assist in the collection process.

THE INFORMATION PRACTICES ACT

We examine initially the statutory constraints pertaining to the disclosure of information. The Information Practices Act of 1977 ("Act," *post*), Civil Code sections 1798 through 1798.76, was enacted to protect an individual's right of privacy guaranteed by the state and federal Constitutions with respect to "personal" and "confidential" information (as defined by the Act) which is collected, maintained, and disseminated by the state (Civ. Code, §§ 1798.1, 1798.2). (64 Ops.Cal.Atty.Gen. 94, 97 (1981).) The term "personal information" includes information in a record that is maintained by an agency concerning an individual's financial transactions. (Civ. Code, § 1798.3, subd. (b); 64 Ops.Cal.Atty.Gen. 575, 587 (1981).) "Agency" includes state commissions. (Civ. Code, § 1798.3, subd. (d).) Civil Code section 1798.24 provides:

> "No agency may disclose any personal or confidential information unless the disclosure of such information is:

"(a) Pursuant to an unsolicited written request, or an oral request which is accompanied by adequate indication of identity, by the individual to whom the record pertains.

"(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit specified by the individual in the written consent.

". . . . . .

"(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and such use is compatible with a purpose for which the information was collected and such use or transfer is listed in the notice provided pursuant to Section 1798.9.

"(f) To a governmental entity when required by state or federal law.

"(g) Pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

". . . . . .

"(p) To another person or governmental organization to the extent necessary to obtain information from such person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.

". . . . . ."

It is assumed for purposes of this analysis that no unsolicited written request or oral request by the individual to whom the record pertains has been made, and that no prior written voluntary consent of such individual has been given within a prescribed period.[1] Hence, we are not concerned with the exceptions provided in subdivisions (a) or

[1] An issue would arise, in any event, whether prior written consent given as a condition to the receipt of a governmental benefit would be "voluntary" within the meaning of subdivision (b) of section 1798.24.

(b). In the absence of any constitutional or statutory duty of a university *which would necessitate the disclosure of information*,[2] or of any state or federal law requiring such disclosure, we are not concerned with the exceptions provided in subdivisions (e) or (f). With respect to subdivision (p), we have not been advised as to what information a university might have, except for a possible current student address, which would be necessary for the performance by the Commission of its responsibilities. However, the disclosure of financial data would not be required for purposes of eliciting such information.[3] We finally consider the exception provided in subdivision (g), in conjunction with the provisions of Civil Code section 1798.75.[4]

THE CALIFORNIA PUBLIC RECORDS ACT

The California Public Records Act (Gov. Code, § 6250 et seq.) was enacted to ensure the fundamental and necessary right of every person in this state of access to information concerning the conduct of the people's business. (Gov. Code, § 6250.) Generally, every person has a right to inspect any "public record" (§ 6252, subd. (d)) of any local or "state agency" (§ 6252, subd. (a)) including commissions. (§ 6253, subd. (a).)

However, the Legislature, "mindful of the right of individuals to privacy" (§ 6250), has established numerous exceptions to the right of access. (Gov. Code, § 6254; *Black Panther Party* v. *Kehoe* (1974) 42 Cal.App.3d 645, 651-653; 64 Ops.Cal.Atty.Gen. 575, 579-580 (1981).) The statute thus forms "an area of confluence for the conflicting demands of public exposure and personal privacy," recognizing both in its resolution formula under which the right of privacy is "balanced against public interest in the

---

[2] Without regard to the dissemination of any list by the Commission, participating educational institutions are, at least during the period of enrollment, required to notify lenders and the Commission of participating students' enrollment status changes and current addresses. (Ed. Code, § 69761.5, subd. (c).)

[3] While the present inquiry is not limited to the dissemination of names alone, it must be observed that such a list from the Commission in the context of a request for information or other collection services would of course reflect upon the status and financial standing of the student as a recipient of public assistance. (See 64 Ops.Cal.Atty.Gen., *supra*, 582.)

[4] Section 1798.75 provides:

> "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, except as to the provisions of Sections 1798.60 and 1798.70."

We have considered on numerous occasions the inter-relationship between the Information Practices Act and the California Public Records Act. (See 63 Ops.Cal.Atty.Gen. 46, 48 (1980); 64 Ops.Cal.Atty.Gen. 94, 97-100 (1981); 64 Ops.Cal.Atty.Gen. 575, 587-588 (1981).)

dissemination of information demanded by democratic processes." (*Black Panther Party* v. *Kehoe*, *supra*, at 651-652.) Government Code section 6255 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." (Emphasis added.)

One of the *express* exemptions includes "Personnel, medical, or similar files, the disclosure of *which would constitute an unwarranted invasion of personal privacy*." (Gov. Code, § 6254, subd. (c); emphasis added.) The purpose of this exemption is to protect information of a highly personal nature, including financial information, which is on file with a public agency. (Cf. *San Gabriel Tribune* v. *Superior Court* (1983) 143 Cal.App.3d 762, 777; 64 Ops.Cal.Atty.Gen., *supra*, 583.) As with respect to section 6255, *supra*, which serves as a residuary statutory exemption for balancing privacy interests with the public's interest in access (*San Gabriel Tribune* v. *Superior Court*, *supra*, 780; 64 Ops.Cal. Atty.Gen., *supra*, 584-585), section 6254, subdivision (c), also establishes a balancing test. (*Id.*, at 580-581.)

Prior to engaging in the balancing process, we proceed to examine the constitutional dimension of the issue. The supersedure provisions of Civil Code sections 1798.75 and 1798.24, subdivision (g), may not be interpreted to exceed the constraints of article I, section 1, of the California Constitution which, as discussed below, prohibits disclosure of personal information in the absence of a compelling interest. In this regard, Civil Code section 1798.73 provides:

> "Nothing in this chapter shall be construed to deny or limit any right of privacy arising under Section 1 of Article I of the California Constitution."

Further, it is clear that mere compliance with a statute cannot justify an improper invasion of the constitutional right of privacy. (*Doyle* v. *State Bar* (1982) 32 Cal.3d 12, 19.) Hence, neither the Information Practices Act nor the California Public Records Act requires or may be interpreted to permit disclosure of financial data in the absence of a compelling interest.

THE RIGHT OF PRIVACY

In this state, privacy is expressly declared to be an inalienable right. (Cal. Const., art. I, § 1.) Although it has been only 12 years since the people elected to place privacy among the inalienable rights expressly guaranteed in the Declaration of Rights,

traditional principles of constitutional law inform its application. (*Fults* v. *Superior Court* (1979) 88 Cal.App.3d 899, 903.) Prior to 1972, privacy had been identified as a fundamental liberty implicitly guaranteed by the federal Constitution; as such, it is protected even from incidental encroachment absent the demonstration of some compelling interest that is both legitimate and overriding. (*Id.*) We have previously alluded to such "implicitly guaranteed" federal zones of privacy.

> ". . . The Supreme Court of the United States, in *Griswold* v. *Connecticut* (1965) 381 U.S. 479, explicitly recognized the existence of certain 'zones of privacy.' The court found this right, while not expressly provided in the Constitution, to be the result of the interrelationship of express constitutional provisions and to be necessary for the implementation of these express protections. . . . It would, of course, be impossible to enumerate all of the possible zones of privacy, but they have been held to include, by way of example, privacy 'in associations' including privacy of membership lists of a constitutionally valid organization (*NAACP* v. *Alabama* (1958) 357 U.S. 449, 462; *Huntley* v. *Public Utilities Com.* (1968) 62 Cal.2d 67, 72-74), privacy in the 'private realm of family life' (*Prince* v. *Massachusetts* (1944) 321 U.S. 158, 166), privacy 'surrounding the marriage relationship' (*Griswold* v. *Connecticut*, *supra*, at p. 486), privacy of one's home (*Boyd* v. *United States* (1886) 116 U.S. 616, 630; *Camara* v. *Municipal Court* (1967) 386 U.S. 523, 539; *People* v. *Edwards* (1969) 71 Cal.2d 1096, 1099-1105; *Parrish* v. *Civil Service Com.* (1967) 66 Cal.2d 260, 263, 271, 276), and privacy in one's personal financial affairs (*City of Carmel* v. *Young* (1970) 2 Cal.3d 259, 268). The last cited case observed that in determining the constitutional propriety of any such limitation upon the fundamental right of privacy there must be a balancing of interests between the government's need to preserve the efficiency and integrity of the public service on the one hand and the right to maintain privacy in one's personal affairs on the other. In such a case, the government must demonstrate the necessity for such limitation upon the right in question and must show not merely that the restriction is rationally related to the accomplishment of a permissible purpose but that the need is compelling. Moreover, the intrusion must not be overly broad; it must be viewed in the light of less drastic means for achieving the same basic purpose. (*City of Carmel* v. *Young*, *supra*, at p. 268; and cf. *Fort* v. *Civil Service Com.* (1964) 61 Cal.2d 331, 334-335; *Vogel* v. *County of Los Angeles* (1967) 68 Cal.2d 18, 22; *Kinnear* v. *City and County of San Francisco* (1964) 61 Cal.2d 341; *Bagley* v. *Washington Township Hosp. Dist.* (1966) 65 Cal.2d 499.)"

(66 Ops.Cal.Atty.Gen. 486, 487-488 (1983); 64 Ops.Cal.Atty. Gen. 728, 739-740 (1981).)

The purposes for which the right to privacy were expressly incorporated into the state Constitution were reiterated in *Porten* v. *University of San Francisco* (1976) 64 Cal.App.3d 825, 830:[5]

> The California Supreme Court has stated that the privacy provision is directed at four principal 'mischiefs': '(1) "government snooping" and the secret gathering of personal information; (2) the overbroad collection and retention of unnecessary personal information by government and business interests; (3) the improper use of information properly obtained for a specific purpose, for example the use of it for another purpose or *the disclosure of it to some third party*; and (4) the lack of a reasonable check on the accuracy of existing records.' (*White* v. *Davis*, *supra*, 13 Cal.3d at p. 775.)" (Emphasis added.)

Financial information clearly falls within the zone of privacy under article I, section 1, of the California Constitution (*Moskowitz* v. *Superior Court* (1982) 137 Cal.App.3d 313, 315; *Rifkind* v. *Superior Court* (1981) 123 Cal.App.3d 1045, 1050-1051) which immunizes such information, including that in the custody of third parties, from disclosure (*Doyle* v. *State Bar* (1982) 32 Cal.3d 12, 19; *Burrows* v. *Superior Court* (1974) 13 Cal.3d 238, 243; *Valley Bank of Nevada* v. *Superior Court* (1975) 15 Cal.3d 652, 658), except where (1) such disclosure is made pursuant to a compelling public interest which is both legitimate and overriding (*Fults* v. *Superior Court*, *supra*, 88 Cal.App.3d at 903; *Moskowitz* v. *Superior Court*, *supra*, at 316; *Payton* v. *City of Santa Clara* (1982) 132 Cal.App.3d 152, 155), and (2) the scope of disclosure is narrowly circumscribed (*Moskowitz* v. *Superior Court*, *supra*, at 316, 317).

Thus, we have again returned to a balancing test, bearing in mind, however, that the constitutional standard requires, in the case of disclosure, a compelling public interest. First, each school has a significant interest in the reduction of the default rate of its students. This interest is based upon the availability of loans to its students and prospective students, the expansion of its applicant flow and quality of selection. We are

---

[5] The right of privacy, often equated by the California courts with the right "to be let alone," has traditionally been the subject of civil actions for damages insofar as the unwarranted publication of personal information is concerned. (*Gill* v. *Hearst Publishing Co.* (1953) 40 Cal.2d 224, 228; *Carlisle* v. *Fawcett Publications, Inc.* (1962) 201 Cal.App.2d 733, 745; and see *Black Panther Party* v. *Kehoe* (1974) 42 Cal.App.3d 645, 652.) Moreover, it has been held that the California constitutional provision, added in 1972, is self-executing and confers a judicial right of action. Hence privacy is protected not merely against state action, it is considered an inalienable right which may not be violated by anyone. (*Porten* v. *Univ. of San Francisco* (1976) 64 Cal.App.3d 825, 829.)

apprised and it is reasonably inferred that commercial lenders would prefer those loan applicants who will enroll in a school which has experienced a low default rate and which is a willing participant in the collection process so as to minimize its administrative costs associated with defaults.

Based upon this inherent interest the Commission may disclose such information for the purposes intended. It is our understanding that upon receipt of such information, the school undertakes to communicate with the student, encouraging the student to repay or to make arrangements for repayment of the indebtedness, setting forth the school's interest in the matter. The school may also advise the Commission as to any information it might have respecting the location of the student. Again, it is our understanding that these measures may provide in many instances a valuable aid in the recovery effort.

Further, in our view, the assertion of his right to privacy against the government's attempt to collect by a student borrower who had elected to take advantage of the publicly assisted program and failed to repay the state guaranteed indebtedness should not prevail against the public interest in the financial integrity of its program. Even assuming that the student borrower may be said to have a "reasonable expectation of privacy" (cf. *Burrows* v. *Superior Court*, *supra*, 13 Cal.3d at 243; *Doyle* v. *State Bar*, *supra* , 32 Cal.3d at 19-20) respecting the loan transaction per se, such expectation may not be reasonably extended to the fact of the student's default or delinquency as may be disclosed by an agency or organization, whether public or private, which is the *victim* of such default or delinquency (compare, *People* v. *Nosler* (1984) 151 Cal.App.3d 125, 131-132; *Burrows* v. *Superior Court*, *supra*, at 245). The very nature of the mutual obligations of a contract suggest that upon the failure of performance by either party, the other, or its guarantor, will undertake all reasonable measures to compel performance. Nor are we aware of any case which would suggest that a public agency does not have the right or even the duty as a public trust to defend its own interests in financial matters including, by way of example, the initiation and pursuit of litigation for recovery in a public court of competent jurisdiction alleging all material averments.

In our view, therefore, even assuming that the right of privacy is appropriately invoked, the fiscal solvency of programs enacted in the furtherance of the social welfare is a compelling public interest. Further, we are advised that the scope of disclosure is specifically limited to student identification and the fact of default or delinquency and only to those having attended the school in question, and is therefore as narrowly circumscribed as feasible in the premises.

It is concluded that the Commission may distribute a list of names of students, along with pertinent information as to the status of their loans, who have defaulted

or who are delinquent in payments on guaranteed student loans to schools participating in the program.[6]

The second inquiry is whether the Commission may advise a lender participating in the State Guaranteed Loan Program that a loan applicant is in default on a prior student loan. The Information Practices Act excepts from the general prohibition against the disclosure of personal information a disclosure which is made "[t]o a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and such use is compatible with a purpose for which the information was collected and such use or transfer is listed in the notice provided pursuant to Section 1798.9." (Civ. Code, § 1798.24, subd. (e).)[7] Education Code section 69761.5 provides:

> "The commission shall serve as a state student loan guarantee agency, pursuant to P.L. 94-482, and subsequent federal regulations including but not limited to the following provisions:
>
> ". . . . . .
>
> "(e) *A student may receive a guaranteed student loan only if* he or she is maintaining satisfactory progress in a course of study pursuant to practices of the institution in which the student is enrolled, and provided *the student has not previously defaulted on any student loan*. If a student has made

---

[6] It has been suggested that the state is precluded from disseminating a list of debtors by the Fair Debt Collection Reporting Act (Civ. Code, §§ 1788-1788.32). It is noted, however, that the term "person" as employed in the definition of a "debt collector" (§ 1788.2, subd. (c)) is specifically limited to "a natural person, partnership, corporation, trust, estate, cooperative, association or other similar entity" (§ 1788.2, subd. (g)), and therefore does not include the state. By way of comparison, see Civil Code section 1785.3, subdivision (a), expressly including in the definition of "person" in the context of the Consumer Credit Reporting Agencies Act, in addition to the entities listed above, government or governmental subdivisions or agencies.

[7] Civil Code section 1798.9 provides:

"Each agency maintaining a system of records containing personal or confidential information shall file with the Office of Information Practices the notice specified in Section 1798.10. Such notices shall be filed with that office by such agencies on the first day of July of each year. Such notices shall be permanent public records. The Office of Information Practices may establish regulations prescribing the form and method of updating the notices required by Section 1798.10 to implement this section. Any agency maintaining more than one system of records may combine such notices when convenient and appropriate. Upon a showing of good cause by an agency, the Office of Information Practices may extend the time for filing notices for a period not to exceed 120 days."

satisfactory arrangements to repay a default on a previous student loan, the student may be eligible to receive a guaranteed student loan.

". . . . . ." (Emphases added.)

Hence, a lender may not grant, and the Commission may not guarantee, a loan under the program to a student who has defaulted on and who has not made satisfactory arrangements to repay any prior student loan. Thus, it is the duty of the lender and of the Commission, in compliance with state and federal laws and regulations, to be informed with respect to any such occurrence. Further, the disclosure is, in our view, made pursuant to a compelling public interest in preserving the financial integrity of the program, and is therefore constitutionally sufficient. It is concluded that the Commission may advise a lender participating in the program that a loan applicant is in default on a prior loan.

The final inquiry is whether the Commission may advise lenders participating in the program of a school's default rate on student loans. Such information is neither "confidential" nor "personal" within the meaning of the Information Practices Act (Civ. Code, § 1798.3, subds. (a) & (b)) and is therefore not subject to the Act. (Civ. Code, § 1798.2.) Such written information which is prepared, owned, used, or retained by the Commission is a "public record" within the meaning of the California Public Records Act (Gov. Code, § 6252, subd. (d)) and is therefore subject to disclosure. (Gov. Code, § 6253.) It is concluded that the Commission may advise lenders participating in the program of a school's default rate on student loans.

****