



**State of New York  
Department of State  
Committee on Open Government**

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**FOIL AO 19859**

April 23, 2024

*By Electronic Mail Only*

*The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence.*

Dear:

Thank you for contacting us with your questions regarding access to certain information reflected in various union membership records. Following your inquiry, we received several others of a similar nature. To address a necessary distinction arising with respect to portions of those records reflecting personal information of public employees properly subject to an exemption based on an unwarranted invasion of privacy, the Committee on Open Government issues this clarifying guidance.

All records of an agency are presumed available under the Freedom of Information Law (FOIL), unless the content of the record falls within one of the exemptions to disclosure found in § 87(2)(a)-(t). When content falls within § 87(2), the records may be withheld in whole or in part, which has been interpreted to mean that if any portion of a record is not exempt it must be disclosed.

Section 87(2)(b) allows an agency to withhold portions of a record if disclosure would otherwise constitute an unwarranted invasion of personal privacy. Determining whether disclosure of particular content would constitute an unwarranted invasion of personal privacy is generally a fact specific inquiry. Section 89(2)(b) provides some guidance: "An unwarranted invasion of personal privacy includes, but shall not be limited to . . . , disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it . . . ."

When a requestor seeks records containing the personal information of a public employee, the agency may weigh the personal interests of the employee against the degree to which the content of the record is relevant to the performance of the public employee's official duties. The

courts have found that, as a general rule, records that are relevant to the performance of a public employee's official duties are available because disclosure would result in a permissible, rather than an unwarranted, invasion of personal privacy. See *Farrell v. Village Board of Trustees*, 372 N.Y.S. 2d 905, 908 (Supr. Ct. Broome Co., 1975); *Gannett Co. v. County of Monroe*, 59 A.D. 2d 309 (4th Dep't 1977), *aff'd* 45 N.Y. 2d 954 (1978); *Capital Newspapers v. Burns*, 67 N.Y.2d 562 (1986); *New York 1 News v. Off. of President of Borough of Staten Island*, 231 A.D.2d 524, 525, 647 (2d Dep't 1996). Conversely, to the extent that records are irrelevant to the performance of one's official duties, courts have held – and the Committee has agreed – that disclosure would constitute an unwarranted invasion of personal privacy. See [FOIL AO 14161](#), collecting cases, *citing Matter of Wool*, Supr. Ct. Nassau Co., N.Y.L.J., Nov. 22, 1977 (relating to membership in a union).

Details of a public employee's membership in and representation by a union presents an interesting challenge in weighing the public right to know details of public employment with the finer details involving information pertaining to individual employees. We must, therefore, assess the question whether various types of union records are available under both lenses.

General information about unions and which classes of public employees are covered by the various unions and bargaining units is information that is publicly available. Executed public employee union contracts are readily available and accessible to the public. Based upon information that is publicly available pursuant to the Civil Service System, anyone can determine which bargaining unit represents a particular civil service title. Therefore, in our opinion, disclosure of public employee names and the name and bargaining unit of the union covering that employee would not generally constitute an unwarranted invasion of personal privacy. The information reflected in those records is clearly related to the work of the agency maintaining it as the negotiated terms dictate many aspects of daily operations for the public employees working within the various titles.

However, § 89(3)(a) provides that

[a]n agency may require a person requesting lists of names and addresses to provide a written certification that such person will not use such lists of names and addresses for solicitation or fund-raising purposes and will not sell, give or otherwise make available such lists of names and addresses to any other person for the purpose of allowing that person to use such lists of names and addresses for solicitation or fund-raising purposes.

Accordingly, the “sale or release of lists of names and addresses if such lists would be used for solicitation or fund-raising purposes” constitutes an unwarranted invasion of personal privacy as a matter of law. § 87(2)(b)(iii). Thus, in the circumstance where the requestor is seeking a list of names and home addresses of union members, the agency may request such certification

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and/or deny access to the list if the requestor seeks the records for solicitation or fund-raising purposes.

We must also make a further distinction between “union membership” and “union representation.” Just because a particular public employee is represented by a particular bargaining unit and union does not mean that employee is a dues-paying member of the union. *See Janus v. AFSCME*, 585 U.S. 878 (2018). Therefore, there is a distinction to be made regarding access to records reflecting union representation, meaning which job titles are represented by each union and bargaining unit, and those reflecting an individual employee’s actual membership in the union. Employees who opt-out of union membership are still governed by the contract negotiated by the union for their specific job titles. Non-dues paying members simply do not get some of the other benefits offered to dues paying members, such as union provided insurance coverage. Whether any particular employee pays dues or participates in union offered programs or benefits is clearly not related to the work of the agency maintaining it. Based on the same reasoning, disclosure of other information pertinent to individual employees’ personal information – such as home contact information, gender identity, ethnicity, race identification or date of birth – would, in our opinion, constitute an unwarranted invasion of personal privacy.

Thank you for your inquiry.

Sincerely,

*s/ Christen L. Smith*  
Senior Attorney