

**VOLUME NO. 44**

**OPINION NO. 32**

**COUNTY OFFICERS AND EMPLOYEES - Public disclosure of county time records showing hours of work and claims for pay by employee;  
EMPLOYEES, PUBLIC - Public disclosure of county time records showing hours of work and claims for pay by employee;**

PRIVACY - Public disclosure of county time records showing hours of work and claims for pay by employee;

RIGHT TO KNOW - Public disclosure of county time records showing hours of work and claims for pay by employee;

MONTANA CONSTITUTION - Article II, sections 9, 10;

OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 6 (1989), 38 Op. Att'y Gen. No. 109 (1980).

HELD: County time records which show an employee's name, the department for which the employee works, and the hours worked, including claims for vacation, holiday, or sick leave pay, are subject to public disclosure.

May 1, 1992

Robert Slomski  
Sanders County Attorney  
P.O. Box 519  
Thompson Falls MT 59873-0519

Dear Mr. Slomski:

You have requested my opinion on the following issue:

Are monthly time sheets, which show hours worked by a county employee and claims for vacation, holiday, or sick leave pay, subject to public disclosure?

Sanders County employees are required to fill out and submit a "time card" by the 25th day of each month. The form consists of various spaces for recording hours worked, and designations of hours as regular, overtime, vacation, sick, holiday, compensatory, military/jury duty, or leave without pay. The form is generally similar to other public employee time records and provides spaces for an employee's name, an employee number, and the department for which he or she works. It must be signed by the employee and a department head or supervisor.

Your request arose when Sanders County was requested to produce time records of specific employees. Resolution of the issue requires application of a balancing test which considers whether or not individual privacy rights outweigh the merits of public disclosure of the information.

Article II, section 9 of the Montana Constitution provides:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which

the demand of individual privacy clearly exceeds the merits of public disclosure.

The right to privacy afforded all Montanans is set out in Article II, section 10 of the Montana Constitution, which states:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

When faced with issues similar to yours, the Montana Attorney General has consistently applied a test to determine whether a conflict between these two rights exists and, if so, whether the right to individual privacy exceeds the right to know. As stated in 43 Op. Att'y Gen. No. 6 at 14 (1989), the analysis consists of:

(1) [D]etermining whether a matter of individual privacy is involved, (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy *clearly outweighs* the demand of public disclosure. [Emphasis in original.]

Thus, it is necessary to review the information on the time records to determine whether it involves matters of individual privacy. The records show an employee's record of hours worked or claimed for pay and charge nonwork hours to specific categories, *e.g.*, vacation or sick leave. Generally speaking, the information shown does not reveal any personal aspects of a public employee's life. The most personal aspect involved would be a claim for nonwork pay. But even the disclosure of an employee's claim for vacation or sick leave pay does not entail disclosure of the particular circumstances associated with the claim.

The Montana Attorney General has previously concluded that a state employee's title, dates and duration of employment, and salary are public information. 38 Op. Att'y Gen. No. 109 at 375 (1980). In so concluding, the Attorney General found no demand for individual privacy with regard to an employee's title, as the information relates only to the employee's role as a public employee and not to any personal aspect of the individual's life. With regard to an employee's dates of employment and salary, a slight demand for individual privacy was recognized. When balanced against the public's right to know information regarding the payment and work of public employees, there was no question that the right to know required disclosure.

Like a state worker's dates of employment and salary, a county employee's hours of work and claims for pay or credit are information involving only a slight intrusion into individual privacy. This conclusion is consistent with the

decisions of the Montana Supreme Court requiring a reasonable expectation of privacy regarding the information sought. See Belth v. Bennett, 227 Mont. 341, 740 P.2d 638 (1987); Missouliau v. Board of Regents, 207 Mont. 513, 675 P.2d 962 (1983); Montana Human Rights Division v. City of Billings, 199 Mont. 434, 649 P.2d 1283 (1982). Considering all relevant circumstances, it is apparent that public employees making claims for public pay could not have a reasonable expectation of privacy in records showing hours of work.

On the other hand, the public has a substantial interest in having access to a public employee's record of hours worked and hours claimed for pay. Allowing such access is very important to a system of public employment. "Disclosing such information increases public confidence in its government, and consequently increases government's ability to serve the public." 38 Op. Att'y Gen. No. 109 at 375, 379 (1980). The public interest definitely outweighs the demand of individual privacy.

A county employee's name, the department for which he works, and his hours worked (in designated categories of pay) must, however, be distinguished from a number that is unique to an employee and that is shown on such records. It is arguable that such a number, like a social security number, is protected from disclosure by a high demand of individual privacy, and is of little interest to the public. 43 Op. Att'y Gen. No. 6 at 14 (1989).

THEREFORE, IT IS MY OPINION:

County time records which show an employee's name, the department for which the employee works, and the hours worked, including claims for vacation, holiday, or sick leave pay, are subject to public disclosure.

Sincerely,

MARC RACICOT  
Attorney General