the field of providing suitable remedies for all employees claiming to have been the victims of such discrimination.

FRANK J. KELLEY,
Attorney General.

730807.1

PUBLIC RECORDS: Examination by members of the public.

Records of names and compensation of public officers and employees including officers and employees of institutions of higher education, are public records subject to examination and copying by members of the public.

The custodian of public records may make and enforce reasonable rules and regulations with regard to the examining and copying of such records so as to protect the records from loss and destruction and to maintain the efficiency of his office.

In limited instances, where the public interest may require, the record of the name and compensation of a public employee be held in confidence. However, in such cases the burden of justifying confidentiality is on the custodian of the record.

Opinion No. 4794 August 7, 1973.

Hon. Loren D. Anderson
State Representative
The Capitol
Lansing, Michigan

You have asked my opinion as to whether any unit of government may withhold information of government salaries paid out of public money. You also inquired as to whether the board of control of a university may withhold from the public information relative to personnel salaries.

The fact that two questions were asked suggests that, with regard to the withholding of information about personnel salaries, the board of control of a university may have a different status than other units of government. In my opinion, this is not the case. The universities and colleges continued by Const 1963, art 8, § 5, and the colleges and universities granting baccalaureate degrees, created by law, and whose governing bodies are constitutional bodies corporate under Const 1963, art 8, § 6, are a part of the government of the State of Michigan and are public bodies. *Robinson* v *Washtenaw Circuit Judge,* 228 Mich 225, 228 (1924). *Branum* v *Board of Regents of University of Michigan,* 5 Mich App 134, 138 (1966). *Regents of University of Michigan* v *Labor Mediation Board,* 18 Mich App 485, 490 (1969). *Regents of University of Michigan* v *Michigan Employment Relations Commission,* 389 Mich 96 (1973). The board of control of a university is a public employer and its employees are public employees. *Regents of University of Michigan* v *Labor Mediation Board, supra.*

In general, records deemed to be public are specified in MCLA 399.5; MSA 15.1805. 1 OAG, 1957, No 2969, p 147 (April 2, 1957). In pertinent part, this section reads as follows:

"Any record that is required to be kept by a public officer in the discharge of the duties imposed on him by law, or that is a writing required to be filed in a public office, or is a written memorial of a transaction of a public officer made in the discharge of his duty, shall be the property of the people of the state, . . ."

In 45 Am Jur, Records and Recording Laws, § 2, p 420, a public record is defined as follows:

". . . In all instances where by law or regulation a document is filed in a public office and required to be kept there, it is of a public nature, but this is not quite inclusive of all that may properly be considered public records. For whenever a written record of the transactions of a public officer in his office is a convenient and appropriate mode of discharging the duties of his office, it is not only his right, but his duty, to keep the memorial, whether expressly required so to do or not; and when kept it becomes a public document which belongs to the office rather than to the officer. . . ."

To like effect is MCLA 750.491; MSA 28.759, reading in part as follows:

"All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. . . ."

My predecessor has ruled that a list of the names of its employees kept by a county road commission is a public record and is subject to inspection by the public. 2 OAG, 1956, No 2786, p 645 (November 7, 1956). A record of employees and their compensation is not only a convenient and appropriate mode of a public body, or officer, discharging its, or his, responsibilities, it is a necessary mode, if for no other reason than the fact that it is required by the Internal Revenue Code of 1954 and the regulations of the Secretary of the Treasury promulgated pursuant thereto.

The common law right of a member of the public to examine public records was affirmed by the Supreme Court in *Burton* v *Tuite,* 78 Mich 363, 374 (1889). In *Burton,* the Court said:

". . . I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to, and public inspection of, public records. They have an interest always in such records, . . ."

In *Nowack* v *Auditor General,* 243 Mich 200, 203-204 (1928), the Court said:

". . . If there be any rule of the English common law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules. . . . Undoubtedly, it would be a great surprise to the citizens and taxpayers of Michigan to learn that the law denied them access to their own books for the purpose of seeing how their money was being expended and how their business was being conducted. There is no such law and never was either in this country or in England. . . ."

In some instances, the examination of public records by the public is provided for by statute. MCLA 750.492; MSA 28.760 makes it a misdemeanor for any officer having the custody of any county, city or township records in this state to neglect to furnish proper and reasonable facilities for the inspection and examination of the records. It further provides for the making of reasonable rules with reference to the inspection and examination of the records by the custodian thereof as may be necessary for the protection of the records and files and to prevent interference with the regular discharge of the duties of such officer.

The School Code of 1955, § 562, MCLA 340.562; MSA 15.3562, makes all records of boards of education public records subject to inspection under MCLA 750.492. Also, the School Code of 1955, § 608, MCLA 340.608; MSA 15.3608, directs that the reimbursed expenses of board members and employees be public records and made available to any person upon request.

The affirmation by statute of the public's right to inspect certain public documents is not construed as a limitation upon the common law principles relative to such rights. *Nowack, supra.*

Although not raised directly by your questions, I feel that it is appropriate to comment upon the English common law rule which permitted inspection but provided no remedy for the enforcement thereof for the average citizen because in order to have a remedy a citizen had to show a special interest as distinguished from the general interest of a member of the public at large. The special interest rule is not a part of the common law of this state.

> "The fundamental rule in Michigan on the matter before us, first enunciated in the case of *Burton* v *Tuite* (1889), 78 Mich 363, is that citizens have the general right of free access to, and public inspection of, public records. This is contrary to the English common-law rule which permitted inspection but prohibited private use, by providing no remedy in the absence of a showing of special interest specifically concerning litigation. The oft-cited equity standard of 'no right without a remedy' helped to destroy the rule as has the democratic desire to maintain freedom of access of the public to the records made by its government." *Booth Newspapers, Inc* v *Muskegon Probate Judge,* 15 Mich App 203, 205 (1968).

It should be recognized that the public's right to the examination of public records is not totally unqualified. In *Massachusetts Mutual Life Insurance Co* v *Trustees of Michigan Asylum,* 178 Mich 193 (1913), the refusal of the asylum to allow the examination of a patient's records was upheld because the records, although kept by and in the custody of public officers and employees, came within the patient-physician privilege. My predecessor ruled that the public might be refused inspection of jury questionnaires prior to the selection of the panel by the jury commission. 1 OAG, 1957, No 2804, p 55 (February 1, 1957). By court rule, the Supreme Court has limited the examination of completed jury questionnaires to certain persons having a direct special interest therein, except as authorized by the order of the circuit court. GCR 1963, 510.3.

In a similar vein, it has been recognized that the courts may determine that the legislature intended to restrict access to public records in cases where harm to the public interest may be said to outweigh the right of members of the public to have access or where the purpose for which the information will be used is stated to be unlawful. See *Booth Newspapers, supra,* pp 207-208, and cases cited in the footnote. In this regard, a lawful purpose is one that is not criminal. It need not be commendable or even proper in the judgment of the person in custody of the public records. *Brown* v *Knapp,* 54 Mich 132, 133 (1884). 2 OAG, 1956, No 2786, *supra.* Moreover, the courts have held that because of a citizen's predominant interest, the burden is upon the public officer or public body to explain why the right of inspection should be curtailed. *MacEwan* v *Holm,* 359 P2d 413, 422 (Ore, 1961).

Examination, inspection and copying of public records by members of the public are subject to reasonable rules and regulations that may be promulgated by the custodian thereof for the protection of the records and to prevent interference with the regular discharge of the duties of the office. MCLA 750.492; MSA 28.760. *Burton* v *Tuite, supra.*

I will summarize as follows:

1. Records of the names and compensation of the officers and employees of the State of Michigan and its political subdivisions, including the colleges and universities continued by Const 1963, art 8, § 5, and the colleges and universities granting baccalaureate degrees, created by law, and whose governing bodies are constitutional bodies corporate under Const 1963, art 8, § 6, are subject to examination, inspection and copying by any member of the public for any lawful purpose.

2. Conceivably, in some limited instances, the public interest may require that the names and compensation of a public officer or a public employee be held in confidence from the public. If this should be the case, the burden is on the custodian of the records to justify the confidentiality. Nor should the caution expressed by Walter Lippman go unheeded. [1]

3. The custodian of the records, or the governing board of the public body, may make reasonable rules and regulations with regard to examination, inspection and copying so that the records are protected from loss or destruction and to permit the effective functioning of the public office. However, the right of the public to know cannot be restricted under the guise of protecting the records or maintaining the efficiency of the office. *Burton* v *Tuite, supra.*

My conclusions are consistent with a recent decision of the Circuit Court for the County of Bay, Honorable Leon R. Dardas, Circuit Judge, in the case entitled *Booth Newspapers, Inc* v *Delta College and Saginaw*

---

[1] "At different times and for different subjects some men impose and other men accept a particular standard of secrecy. The frontier between what is concealed because publication is not, as we say, 'compatible with public interest,' fades gradually into what is concealed because it is believed to be none of the public's business."

Walter Lippman, Public Opinion, as quoted in *MacEwan, supra,* pp. 421-422.

Valley College, No. 7609-D, appeal dismissed by stipulation,—Mich App —, in which the Court said:

> "It is, therefore, the judgment of this Court, that Saginaw Valley College shall disclose and make available to the Plaintiff, and the public, the records of this institution, dealing directly or indirectly with salary, bonuses, allowances, or fringe benefits, (giving these terms the broadest possible effect), of every employee of Saginaw Valley College, from the Night-Watchman to the President, or anyone on the public payroll in that institution." p 4

FRANK J. KELLEY,
Attorney General.

730824.1

PSYCHOLOGISTS: Citizenship requirement for licensure

CONSTITUTIONAL LAW: Citizenship requirement for licensure as a psychologist

The statutory requirement that an applicant for a license to practice psychology be a citizen of the United States is unconstitutional as a denial of equal protection of the laws.

Opinion No. 4775 August 24, 1973.

Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan 48926

You have requested my opinion as to whether the requirement of citizenship as a prerequisite to licensure under the Psychologist Registration Act [1]

Section 3 of 1959 PA 257, as amended, *supra,* requires that:

> "Every applicant for certification under this act shall:
> "* * *
> "(2) Be a citizen of the United States or have declared his intention of becoming one." MCLA 338.1003; MSA 14.677(3)

The Fourteenth Amendment to the United States Constitution[2] decrees:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is clear that lawfully admitted resident aliens fall within the purview of the term "person" in its constitutional context. See *Yick Wo* v *Hopkins,* 118 US 356, 6 S Ct 1064, 30 L Ed 220 (1886); *Truax* v *Raich,* 239 US 33, 36 S Ct 7, 60 L Ed 131 (1915); *Takahashi* v *Fish & Game Comm,* 334 US 410, 68 S Ct 1138, 92 L Ed 1478 (1948); *Graham* v *Richardson,* 403 US 365, 91 S Ct 1848, 29 L Ed 2d 534 (1971).

---

[1] 1959 PA 257, as amended; MCLA 338.1001 *et seq;* MSA 14.677(1) *et seq.* is constitutional and enforceable.

[2] US Const, Am XIV, § 1.