If there is in fact no concrete likelihood of enforcement proceedings, then the administrative agency must decide what material within the closed investigative file is nonetheless otherwise exempted from disclosure under other parts of 1969 PA 306, § 22, *supra,* or other relevant statutes. In making this determination, you are advised that the burden rests with the administrative agency to demonstrate the applicability of an exemption from disclosure.

I am convinced that the public interest is best served when state agencies willingly abide by the intent and spirit of the public disclosure provision of the Administrative Procedures Act, subject only to such limitation as is imposed by that statute's specific exemptions from disclosure and the protection of the right of privacy.

Therefore, you are advised that, unless an administrative agency can demonstrate either (1) a concrete prospect of enforcement proceedings or (2) a specific statutory exemption or (3) an unwarranted invasion of an individual's right of privacy, the exemptions set forth in sub-sections 22(e) and (f) covering closed investigative files are not applicable. As the *Bristol-Myers* case noted, an administrative agency may not "protect all its files with the label 'investigatory,' and a suggestion that enforcement proceedings will be invoked at some unspecified future date."

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Records.

RECORDS AND RECORDATION: Personnel Files.

Personnel files of county employees are not subject to public inspection.

County officials having custody of personnel files of county employees have discretion as to whether to disclose information in such files but may not disclose information that would constitute an unwarranted invasion of privacy.

Opinion No. 4905 December 9, 1975.

Mr. Donald C. Conway
Corporation Counsel
Genesee County
1101 Beach Street, Room 317
Flint, Michigan 48502

You have requested my opinion on the following:

> "What legal obligation does Genesee County have with respect to answering requests by private concerns (i.e., collection agencies, credit unions) and/or governmental agencies for information contained in the personnel files (i.e., address, length of employment, and other items of information) maintained by the county regarding its em-

ployees? Must the County Personnel Department obtain the employee's written authorization prior to compliance with the request received?"

Michigan has long been at the vanguard of jurisdictions that insist upon the right of persons to inspect public records. The early case of *Burton* v *Tuite,* 78 Mich 363, 375; 44 NW 282 (1889), stated that:

> ". . . It is plain . . . that the Legislature intended to assert the right of all citizens, in the pursuit of a lawful business, to make such examinations of the public records in public offices as the necessity of their business might require, subject to such rules and restrictions as are reasonable and proper under the circumstances. . . ."

Nowack v *Auditor General,* 243 Mich 200; 219 NW 749 (1928), carried this idea forward adding:

> ". . . 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. . . .
>
> "* * *
>
> "There is no question as to the common-law right of the people at large to inspect public documents and records. The right is based on the interest which citizens necessarily have in the matter to which records relate." [pp 203-204]

In *Booth Newspapers, Inc* v *Muskegon Probate Judge,* 15 Mich App 203, 207-208; 166 NW2d 546 (1968), the Court noted that restrictions may be placed on the public's access to public records, stating:

> "First, the legislature, for its own reasons, may specifically define and limit 'persons interested' to a certain class, also intending that such definition be uniform throughout the code. It may also foresee certain governmental burdens and so restrict access by providing definitions of 'public' as opposed to 'private' records. Finally, the courts may determine that the legislature intended to restrict access 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, or where reputations may be harmed, or for pastime, whim or fancy. In such cases, a balancing of the public interest with the right of access must be made. . . ."

1931 PA 328, § 492; MCLA 750.492; MSA 28.760, provides in pertinent part:

> "Any officer having the custody of any county, city or township records in this state who shall when requested to fail or neglect to furnish proper and reasonable facilities for the inspection and examina-

tion of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, . . ."

Nevertheless, as noted by the above quote from *Booth Newspapers, Inc.*, whether a record in the custody of a public official is available for public inspection depends upon its nature and purpose. In addition, individuals are protected by the constitutional right of privacy, which is defined in *Earp* v *City of Detroit,* 16 Mich App 271, 275-276; 16 NW2d 841 (1969)[1] to be:

" '[T]he right of an individual to be let alone, or to live a life of seclusion, or to be free from unwarranted publicity, or to live without unwarranted interference by the public about matters with which the public is not necessarily concerned, or to be protected from any wrongful intrusion into an individual's private life which would outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.' 77 CJS, Right of Privacy, § 1, pp 396, 397."

Earp, supra, p 276, went on to state that this right is not absolute, recognizing that:

" 'In determining the extent of the right of privacy, it is essential to consider it in the light of duties imposed on individuals as citizens of a free country and in the light of an individual's relation to the community of which he is a member, and such right does not extend so far as to subvert those rights which spring from social conditions, including business relations, or to prohibit the publication of matter which is of public or general interest or benefit.' 77 CJS, Right of Privacy, § 3, pp 401, 402."

One of the recognized limitations on the right of public inspection was dealt with by the Michigan Court of Appeals in *Grayson* v *Board of Accountancy,* 27 Mich App 26; 183 NW2d 424 (1970). In this case the Court refused to order the disclosure of the names and addresses of applicants for certified public accountant examinations where a statute prohibited disclosing this information.[2] Another example of such limitations on disclosure of records in the custody of public officials appears in the Administrative Procedures Act of 1969, § 22; MCLA 24.222; MSA 3.560(122), which is patterned after the Federal Administrative Procedures Act. The act prevents the public disclosure of the following:

"(c) Material obtained in confidence from a person, matter privileged by law and trade secrets.

"* * *

"(f) Material the disclosure of which would constitute an unwarranted invasion of privacy."

[1] *Roe* v *Wade,* 410 US 113, 152; 93 S Ct 705; 35 L Ed 2d 147 (1972) and *Griswald* v *Connecticut,* 381 US 479, 484-485; 85 S Ct 1678; 14 L Ed 2d 510 (1965) are in accord with this definition of the right of privacy.

[2] MCLA 338.503; MSA 18.3.

Although the provisions of the Administrative Procedures Act of 1969, § 22, *supra,* do not apply to local units of government, they do represent a statement of the State's policy. Similarly, the provisions of 81 Stat 54 (1967), 5 USCA 552(b), prohibit federal agencies from disclosing:

> "(2) [matters] related solely to the internal personnel rules and practices of an agency;
>
> "* * *
>
> "(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
>
> "* * *
>
> "(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;"

It may also be noted that 1941 PA 370, § 12; MCLA 38.412(g); MSA 5.1191(12)(g), which applies to counties with a population of 1,000,000 or more having a civil service commission, provides in pertinent part:

> ". . . It shall cause to be kept in each department and division thereof, records of the service of each employee, known as 'service records'. These records shall contain fact statements on all matters relating to the character and quality of the work done and the attitude of the individuals to his work.
>
> ". . . All . . . employees' records shall be confidential and not open for public inspection."

As you have indicated, the typical employee personnel file includes: (1) an application for employment, (2) a background information form, (3) a notice of appointment or transfer, (4) a physical evaluation form, and (5) a performance evaluation form.

In view of the foregoing, it is my opinion that a personnel file is not available for public inspection. However, although county officials do not have the legal obligation of publicly disclosing all of the contents of employee personnel files, they do have the discretion to disclose the information contained in the files that do not constitute an unwarranted invasion of privacy. See *Neil-Cooper Grain Company* v *Kissinger,* 385 F Supp 769 (DC, 1974). Also as noted in OAG, 1973-1974, No 4794, p . . . (August 7, 1973), custodians of public records having such information must disclose the names and the compensation of public officers and employees.

I would further note that, if the right of privacy is waived by an individual employee, county officials may disclose any personal information pertaining to that employee.

FRANK J. KELLEY,
Attorney General.