



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2015-114

January 12, 2016

The Honorable Mark Martin  
Secretary of State  
Arkansas State Capitol, Room 256  
Little Rock, AR 72201-1094

Dear Mr. Martin:

I am writing in response to your request for an opinion on Act 1015 of 2015, which amended the Arkansas Freedom of Information Act (FOIA) to add an exemption from the FOIA's public-records disclosure requirements.

As amended, the relevant law provides:

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

...

(22) The date of birth, home address, email address, phone number, and other contact information from county or municipal parks and recreation department records of a person who was under eighteen (18) years of age at the time of the request made under this section.<sup>1</sup>

You ask whether the records described in Act 1015 "are any County records, generally, or County parks and recreation departments [records] specifically."

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<sup>1</sup> Ark. Code Ann. § 25-19-105(b)(22) (Supp. 2015).

## RESPONSE

In my opinion, the records described in the applicable portion of Act 1015 are records of a county parks and recreation department, not all records of a county generally.

## DISCUSSION

[Arkansas courts] construe [a] statute just as it reads, giving the words their ordinary and usually accepted meaning in common language, and if the language of the statute is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion to resort to rules of statutory interpretation.<sup>2</sup>

Act 1015 amended the FOIA to provide an exemption from disclosure for certain “county or municipal parks and recreation department records.” In my opinion, this language plainly means the same thing as “county parks and recreation department records or municipal parks and recreation department records.” The common and natural understanding of the language used—“county or municipal parks and recreation department records”—is that “parks and recreation department” modifies both the word “municipal” and the word “county.”<sup>3</sup>

I acknowledge that there is an alternative possible reading of the statute that limits “parks and recreation department” to modifying only the term “municipal” but not the term “county.” Under this reading, the specific FOIA exception would apply to (a) *all* county records, but only (b) municipal parks and recreation department records.

While this alternative reading of the statute is possible, I do not believe it is plausible. Such a reading is highly strained and would represent an unnatural manner of conveying information. Moreover, if the legislature wanted the FOIA exception to reach all county records, but only municipal parks and recreation records, it would have said so in a much more straightforward manner. For

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<sup>2</sup> *Rea v. State*, 2015 Ark. 431, \*4, \_\_\_ S.W.3d \_\_\_, 2015 WL 7305090.

<sup>3</sup> The law expressly authorizes Arkansas counties to provide “[p]ark and recreation services.” Ark. Code Ann. § 14-14-802(b)(2)(C)(vi) (Repl. 2013). At least one county has a parks and recreation department. *See* Sebastian County Parks & Recreation, <http://www.sebastiancountyar.gov/Parks-Rec> (last visited January 7, 2016).

example, the legislature could have added a single word to the statute, so that the relevant language would read, “information from county *records* or municipal parks and recreation department records.”

A statute is not ambiguous where one reading of it is highly likely and the other reading, while theoretically possible, is not plausible.<sup>4</sup> Because I perceive no statutory ambiguity, there is no reason or occasion to apply rules of statutory interpretation to determine the language’s meaning. Even if one deemed the relevant language to be ambiguous, however, application of a familiar canon of statutory interpretation supports my interpretation of the statute. *Noscitur a sociis*, which translates as “it is known from its associates,” is a doctrine that provides that the meaning of a word may be determined by reference to the words accompanying it.<sup>5</sup> In this instance, the meaning of the phrase “municipal parks and recreation department” is clear beyond doubt, and refers to one segment—not the entirety—of municipal government. It seems quite unlikely that the General Assembly meant to establish an exemption with respect to both one relatively small segment of one form of local government, and the whole of another form of local government.<sup>6</sup>

I conclude that the county records described in Act 1015 are records of a county parks and recreation department, not all records of a county generally. Accordingly, in my opinion, Act 1015 does not establish a FOIA exemption with respect to county records other than certain records of a county parks and recreation department.

The fact that Act 1015 covers only records of parks and recreation departments does not, of course, mean that other county records containing the type of

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<sup>4</sup> Cf. *Manning v. State*, 330 Ark. 699, 702, 956 S.W.2d 184 (1997) (statute not ambiguous if one of two possible readings amounts to “subtle and forced construction for the purpose of limiting or extending” statute’s reach).

<sup>5</sup> See, e.g., *State v. Oldner*, 361 Ark. 316, 206 S.W.3d 818 (2005).

<sup>6</sup> I acknowledge that another rule of statutory construction provides that *where no contrary intention appears*, a qualifying phrase (like “parks and recreation department” here) modifies only the last antecedent (here, “municipal”). See, e.g., *McCoy v. Walker*, 317 Ark. 86, 876 S.W.3d 252 (1994). In my view, however, a contrary intention is indeed evidenced here. As previously noted, I believe the most common and natural understanding of the language used by the legislature is that “parks and recreation department” modifies both “municipal” and “county.” In my opinion, the intention of the legislature—as expressed by the words, grammar, and syntax they chose to use in the Act—was to exempt certain records of local parks and recreation departments, regardless of whether the department belongs to a municipality or a county.

information described in Act 1015 are invariably subject to disclosure. Such records may be exempt under another FOIA exemption,<sup>8</sup> or possibly under some other provision of statutory or constitutional law.<sup>9</sup>

Sincerely,



LESLIE RUTLEDGE  
Attorney General

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<sup>8</sup> See generally Ark. Code Ann. § 25-19-105(b).

<sup>9</sup> See, e.g., Ark. Code Ann. § 14-14-110(b) (Repl. 2013), *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).