

Director of Data Processing and Accounts

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L 77-402

General Counsel

Louisville and Nashville Railroad Company - request for
compensation and service records

This is in reply to your request of June 3, 1977, for my opinion as to whether the Board could comply with a request for information which you have received from the Louisville and Nashville Railroad Company.

In his letter to you dated June 1, 1977, Mr. J. I. Berry, Director of Company Pension Plans for the Louisville and Nashville Railroad Company, requested records of compensation and creditable service for each of its employees who are covered by the Company's supplemental pension plan. The information requested includes annual compensation and service months for the years after 1951 and lump-sum data for the years prior to 1951. The employer has requested this information to permit it to develop its own capability to provide covered employees with information as to each employee's vested rights under the plan and with estimates of future benefits. Such estimates and information as to vested rights must, according to the employer, be made available to employees under the Employee Retirement Income Security Act.

In several previous opinions, this office has dealt with questions concerning the types of records and information which may be disclosed to employers. Among these opinions, General Counsel's opinions L-75-367 and L-75-500 dealt with the question presented here.

In General Counsel's opinion L-75-367, a question was presented as to whether the Board could furnish employers various items of information concerning their employees, including compensation and service records and records showing social security wages and service. In that opinion, it was held that the disclosure of such information would be prohibited by the Privacy Act of 1974. General Counsel's opinion L-75-367 did, however, indicate that it would be permissible for the Board to furnish to employers annuity amounts, amounts of the various components of an employee's annuity, and estimates of annuities

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for use in calculating benefits and estimates of benefits under supplemental pension plans. In General Counsel's opinion L-75-500, it was suggested that a "routine use" be established and added to the appropriate notices of records systems to provide for the disclosure of annuity amounts, component amounts, estimates, and related data to employers for purposes of calculating the amounts of benefits payable under an employer's supplemental pension plan.

In accordance with General Counsel's opinions L-75-367 and L-75-500, your bureau prepared and has been furnishing to certain employers annuity estimate files to be used by the employers in computing amounts or estimates of amounts of private supplemental benefits. The Louisville and Nashville Railroad Company apparently feels that the information currently provided is not sufficient and would like more detailed records concerning its employees.

The records requested by the Louisville and Nashville Railroad Company are virtually the same, but more detailed, than those which General Counsel's opinion L-75-367 held could not be furnished to employers. In reaching a decision in L-75-367 holding that the Privacy Act of 1974 would prohibit disclosure of railroad compensation and service data and social security wage and service records, I found that such records were of a sensitive nature and were susceptible of being used in a manner detrimental to the interests of the employees concerned. Since such records would show total compensation, wages, and service, it was perceived that employers could determine from the records whether an employee was "moonlighting," which could very likely result in the employee's termination. The same detrimental use could be made of the records requested by the Louisville and Nashville Railroad Company.

It is my opinion that the holding expressed in General Counsel's opinion L-75-367 is applicable to the request for information submitted by the Louisville and Nashville Railroad Company, and that the Privacy Act of 1974 would prohibit the disclosure to that employer of detailed railroad compensation and service records and social security wage and service data.^{1/} Further, it is my opinion that since disclosure of the requested information could be detrimental to the interests of certain employees, the Board would also be prohibited from disclosing the requested information by section 12(d) of the Railroad Unemployment Insurance Act (45 U.S.C. § 362(d)), as incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act (45 U.S.C. § 231f(b)(3)).

^{1/} It also appears that disclosure of social security wage and service data would be prohibited by section 1202 of the Tax Reform Act of 1976 (90 Stat. 1520, 1667).

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Of course, the Board could furnish the requested information to the Louisville and Nashville Railroad Company if the Company would furnish the Board with written authorizations for such disclosure from its employees, and since the number of employees covered by the plan is only about 1,700, it would not appear to be difficult for the Company to procure the necessary authorizations.

**Dale G. Zimmerman
General Counsel**

SAB:mco