



New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

March 23, 2009

[REDACTED]

Re: Our File No. RO-09-0036

Dear [REDACTED]:

I am writing in response to your letter dated March 6, 2009, concerning the confidentiality of information collected under the New York State Worker Adjustment and Retraining Notification (WARN) Act (Chapter 475 of the laws of 2008) which took effect February 1, 2009. As you know, the Department filed Emergency/Proposed regulations with the Secretary of State on January 30, 2009, to provide regulated parties with further guidance regarding enforcement and interpretation of the Act. These rules became effective immediately upon filing.

You have requested an opinion on whether the names of the affected employees provided in an employer notice to the Commissioner of Labor as required under the State WARN Act would be available to an inquiring party pursuant to a request under New York's Freedom of Information Law (FOIL).

Under §87(2)(b) of Article 6 of the New York Public Officers Law (FOIL), each agency shall . . . make available for public inspection and copying all records, **except** that such agency may deny access to records or portions thereof that . . . if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of §89(2) of FOIL. Under §89(2), an unwarranted invasion of personal privacy includes a disclosure of an individual's employment history. Further, under §96(1) of Article 6-A of the New York Public Officers Law (Personal Privacy Protection Law), no agency may disclose any record or personal information if such disclosure is an unwarranted invasion of personal privacy described under §89(2) of FOIL.

Clearly, releasing information regarding an employment loss suffered by an individual, whether through layoff, plant closing or other means covered by WARN, would constitute a release of an individual's employment history. Since the Personal Privacy Protection Law provides that the release of such information would constitute an unwarranted invasion of

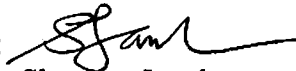
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personal privacy, the Department has determined the names of the affected employees provided in an employer notice to the Commissioner of Labor as required under the State WARN Act will not be published or made available to an inquiring party pursuant to a request under FOIL.

If you have any additional questions, please feel free to contact me at (518) 457-4380.

Very truly yours,

Maria Colavito, Counsel

By: 
Shannon Lawlor
Attorney I

MLC:SL:cmh