



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 12, 1975

Opinion No. 75-211

Mr. Michael D. Mance
Department of Police
8500 Santa Fe Drive
Overland Park, Kansas 66212

Dear Mr. Mance:

You have requested an opinion from this office concerning the propriety allowing public inspection of conviction records kept by the Overland Park Police Department. Furthermore, should these records be open to public inspection, you have requested a description outlining the appropriate procedure to employ in releasing these records to the public.

The operative statutory authority relative to this inquiry, K.S.A. 45-201 provides in pertinent part:

"All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the juvenile court which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, . . ."

[Emphasis added.]

Clearly, the crucial question implicit in this inquiry is whether conviction records kept by local police and law enforcement agencies are "public records . . . which records by law are to be kept and maintained."

A definition of what is arguably encompassed by the term "conviction records" potentially covers a broad spectrum of papers, documents, records, and files which are presently being kept and maintained

by various police departments and other law enforcement agencies. Accordingly, this opinion will undertake to provide a list of those statutes our research has discovered which mandate the keeping and maintaining of particular records. It is not our intention that this list be deemed an all-inclusive guide as to when public inspection is allowed. For example, any records and files which are required to be filed with or kept by courts are specifically excluded. When encountering a request for a particular record not specifically covered in this opinion, the only criteria the city or county attorney need employ in making the correct determination is whether there exists a statute which specifically requires the requested agency to keep and maintain that particular type of record. If so, public inspection is required.

Limited to those records and files which could potentially be termed "conviction records," our research has compiled the following list of statutes which require the law enforcement agency specified therein to maintain certain records and therefore, public inspection of the same is required.

- (1) K.S.A. 21-2501(a) provides that all law enforcement agencies ". . . having responsibility for law enforcement in any political subdivision of this state shall maintain, on forms approved by the attorney general, a permanent record of all felony offenses reported or known to have been committed within their respective jurisdictions, and of all misdemeanors or other offenses which involve the violation of article 25 (uniform narcotic drug act and) or article 26 (hypnotic, somnifacient or stimulating drugs) of chapter 65 of the Kansas statutes annotated."
- (2) The sheriff of each county is required to ". . . keep a true and exact calendar of all prisoners committed to the county jail, which calendar must contain the names of all persons who are committed, their place of abode, the time of their commitment, the time of their discharge, the cause of their commitment, the authority that committed them, and the description of their persons; and when any person is liberated, such calendar must state the time when and the authority by person escape, it must state particularly the time and manner of such escape."
- (3) Relative to traffic accidents, K.S.A. 8-1611 mandates that every law enforcement officer ". . . who investigates a vehicle accident of which report must be

made as required in this article, or who otherwise prepares a written report as a result of an investigation either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses, shall forward a written report of such accident to the division within ten (10) days after his investigation of the accident."

- (4) K.S.A. 19-1911 requires that ". . . when a prisoner is confined by virtue of any process directed to the sheriff, and which shall require to be returned to the court whence it issued, such sheriff shall keep a copy of the same, together with his return made thereon, which copy, duly certified by such sheriff, shall be presumptive evidence of his right to retain such prisoner in custody."

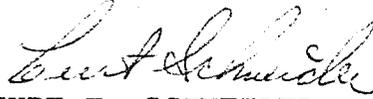
As to the appropriate procedure to employ when a request is made for inspection of one of the above records, K.S.A. 45-201 simply states that these records "shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." The extent of the obligation placed upon the custodian of the requested records is more clearly articulated in K.S.A. 45-202 which provides:

"In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any such public records, instruments or documents, any such person shall have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the said records who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent as may be available."

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The public inspection of any statutorily required record or file must conform in substance to the procedures outlined in the above statute.

Yours very truly,



CURT T. SCHNEIDER
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