STATE OF KANSAS

# Office of the Attorney General

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CURT T. SCHNEIDER
*Attorney General*

August 1, 1975

ATTORNEY GENERAL OPINION NO. 75- 314

James R. James
Judicial Administrator
Kansas Supreme Court
State Capitol Building
Topeka, Kansas 66612

Re: Eavesdropping; interception of wire or oral communication; disclosure of reports filed with Judicial Administrator pursuant to K.S.A. 45-201.

Synopsis: Reports filed with Judicial Administrator pursuant to K.S.A. 22-2519 are subject to disclosure under K.S.A. 45-201.

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Dear Mr. James:

K.S.A. 22-2516 prescribes the conditions and prerequisites under which orders authorizing the interception of a wire or oral communication may be granted. K.S.A. 22-2519 requires periodic and annual reports of such orders:

> "(1) Within thirty (30) days after the expiration of an order entered under section 3 [22-2516], or any extension thereof, the judge issuing such order shall report to the administrative office of the U.S. courts such information as is required to be filed by section 2519 of title 18 of the United States code. A duplicate copy of such report shall be filed, at the same time, with the judicial administrator of the courts of this state.
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> "(2) In January of each year, the attorney general and each district attorney and county attorney shall report to the administrative office of the United States courts such information as is required to be filed by section 2519 of title 18 of the United States code. A duplicate copy of such report shall be filed, at the same time, with the judicial administrator of the courts of this state." [Emphasis supplied.]

The question arises whether reports filed with you as Judicial Administrator are subject to disclosure under K.S.A. 45-201.

The Kansas act regarding interception of wire and oral communications, K.S.A. 22-2514 through -2519, substantially parallels the Wiretapping and Electronic Surveillance provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, approved June 18, 1968. 82 Stat. 218. Title 18, U.S.C. § 2519, a part of that act, prescribes reporting requirements thus:

> "(1) Within thirty days after the expiration of an order (or each extension thereof) entered under section 2518, or the denial of an order approving an interception, the issuing or denying judge shall report to the Administrative Office of the United States Courts --
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> "(a) the fact that an order or extension was applied for;
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> (b) the kind of order or extension applied for;
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> (c) the fact that the order or extension was granted, and the number and duration of any extensions of the order;
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> (d) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;
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> (e) the offense specified in the order or application, or extension of an order;
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> (f) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application; and
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> (g) the nature of the facilities from which or the place where communications were to be intercepted."

In addition, under subsection (2) of this section, annual reports are required to be filed:

> "In January of each year the Attorney General, an Assistant Attorney General specially designed by the Attorney General, or the principal prosecuting attorney of a State, or the principal prosecuting attorney for any political subdivision of a State, shall report to the Administrative Officer of the United States Courts --
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> (a) the information required by paragraphs (a) through (g) of subsection (1) of this section with respect to each application for an order or extension made during the preceding calendar year;

> (b) a general description of the interceptions made under such order or extension, including (i) the approximate nature and frequency of incriminating communications intercepted, (ii) the approximate nature and frequency of other communications intercepted, (iii) the approximate number of persons whose communications were intercepted, and (iv) the approximate nature amount, and cost of the manpower and other resources used in the interceptions;
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> (c) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;
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> (d) the number of trials resulting from such interceptions;
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> (e) the number of motions to support made with respect to such interceptions, and the number granted or denied;
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> (f) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and
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> (g) the information required by paragraphs (b) through (f) of this subsection with respect to orders or extensions obtained in a preceding calendar year."

In April of each year, the Director of the Administrative Office of the United States Courts shall transmit to Congress a full and complete report of the number of applications for orders and the number of orders and extensions granted or denied during the preceding calendar year, and a summary and analysis of the data reported as required above. The Director is authorized to issue binding regulations dealing with the content and form of the reports.

Duplicate copies of such reports, both period, or interim, and annual reports, are required to be filed with you as Judicial Administrator. K.S.A. 45-201 provides in pertinent part thus:

> "All official public records of the state . . . which records by law are required to be kept and maintained, except those . . . specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen . . . ."

We have reviewed regulations promulgated by the Director of the Administrative Office of the United States Court. Clearly, the reports are statistical in nature. Section 102(3) of the regulations, for example, provides that the

> "report by a judge should not disclose the name of any individual whose communication may have been intercepted, nor should the specific address or telephone number be disclosed."

Similarly, under section 201,

> "The report by a prosecuting official should be statistical in character and should not disclose the name of any individual being investigated, nor any specific address or telephone number of a place involved in the communication intercept."

We find nothing in the Wiretapping and Electronic Surveillance provisions of Title III which speaks to the disclosure or nondisclosure of the reports filed with and issued by the Director of the Administrative Office of the United States Courts. We are advised that, prior to transmission of the annual report to the Congress, the Director has denied disclosure of annual and interim reports on the ground of congressional privilege. That privilege does not extend, however, to information and reports required by state law to be filed with state officers. The Kansas law contains no comparable requirement that the Judicial Administrator transmit the requisite reports or summaries thereof to the legislature, upon which any possible claim of legislative privilege might be premised.

This office has long construed K.S.A. 45-201 to require public disclosure of any record which is specifically authorized by law to be kept and maintained, except as specifically excepted by the terms of that statute. Periodic and annual reports filed with the Judicial Administrator are just such reports; records specifically required by law to be kept.

The Kansas Legislature specifically required filing of duplicate reports with the Judicial Administrator, a requirement obviously designed to assure the availability at the state level of information filed with the Director. Disclosure of such information at the state level is governed, however, by state law, unless, superseded by federal law. We find no provision of Title III of the 1968 Act whatever which addresses disclosure or nondisclosure.

It has been urged that disclosure of interim reports may interfere with the effectiveness of authorized interceptions and ongoing investigations, secrecy being essential to the effectiveness of authorized interceptions. Sections 101 and 201(2) of regulations promulgated by the Director, and applicable to reports filed with

the Judicial Administrator, specifically direct that no report filed by either a judge or a prosecutor respecting an authorized interception order shall be filed until on or before thirty days after the authorized period of interception, or extension thereof, has expired. Moreover, the required reports are basically statistical in nature. There must be reported the name of the judge and court authorizing the order, the official making and approving the application, the nature of the offenses for which the investigation is conducted, the duration of interceptions, the type of place where the interception occurs, and the type of interception which is authorized.

It is argued that in a rural state, with relatively small metropolitan areas, knowledge of this information will enable those suspicious of investigative activity to determine the nature and extent of interception, although the required reports do not identify the addresses and names of persons affected, and that this knowledge will cause those suspected of criminal activity to be more wary of interceptions than otherwise, thus impeding the effectiveness of their use. The argument is based substantially on speculative and conjectural premises. It is, certainly, an argument which might properly be addressed to the legislature. It is not an argument, however, on the basis of which the reports in question may be exempted from the application of K.S.A. 45-201, a statute which in our opinion, is clearly applicable to them.

We cannot but conclude that reports filed with the Judicial Administrator pursuant to K.S.A. 22-2519 are subject to inspection pursuant to K.S.A. 45-201.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

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