



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 144

Paul E. Miller
Riley County Attorney
Riley County Courthouse
5th & Poyntz
Manhattan, Kansas 66502

RE: Criminal Law -- Criminal History Information -- Dissemination

SYNOPSIS: Under regulations adopted pursuant to the Crime Control Act of 1973, and regulations promulgated thereunder and published at 41 F.R. 11714 on March 19, 1976, nonconviction criminal history information may be disseminated to city officers when such dissemination is for a purpose authorized by state statute or city ordinance. Under provisions of the Manhattan Municipal Code relating to taxicab operator licenses, however, dissemination beyond the Riley County Police Department is not required nor warranted, however, for the administration of the taxicab operator's licensing code of the City of Manhattan.

* * *

Dear Mr. Miller:

You inquire concerning the propriety of access to criminal history information by the Riley County Police Department for the purpose of administering various licensing requirements of the City of Manhattan.

For example, you cite §10-1109(b) of the Manhattan Municipal Code, which provides in pertinent part thus:

"If the applicant is found by the City Marshall-Chief of Police to be a fit person to operate a

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taxicab within the city according to the above standards it shall be so certified to the City Clerk, who shall issue said applicant a driver's license identification card under the provisions of this article."

The ordinance further provides that no person shall be issued a license if the applicant has been convicted of a felony, any offense involving moral turpitude, hit and run driving, illegal sale, possession or, manufacture or transportation of intoxicating liquors from the date of application; further, no person shall be issued a license who in the opinion of the city marshal or chief of police is not physically fit to drive a taxicab or whose general reputation for integrity and responsibility or whose previous record as a law violator is such as to render the applicant unfit for such occupation.

Information contained in criminal history records would be most pertinent to the administration of this licensing requirement. You inquire whether disclosure and dissemination of information contained in criminal history records for these purposes is consistent with the Crime Control Act of 1973, and regulations promulgated thereunder. Since receiving your letter, the regulations adopted May 20, 1975, 40 F.R. 22114, have been amended by modified regulations promulgated to be effective April 19, 1976, and published at 41 F.R. 11714.

Thereunder, criminal conviction data may be disseminated without limitation. Limitations are imposed on nonconviction data, however. Such data is defined at §20.3(k) thus:

"'Nonconviction data' means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings have been indefinitely postponed, as well as all acquittals and all dismissals."

Most access for noncriminal justice purposes is governed by §20.21(b)(2), which states thus:

"By December 31, 1977, [the plan shall] insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

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"(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies." [Emphasis supplied.]

Section 20.21(c) prescribes pertinent limitations on the use and dissemination of this information:

"(1) Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.

(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."

It is not clear to what extent, if any, criminal history information is disseminated by the Department outside of the Department in the administration of the city licensing requirements. For example, under the terms of the ordinance described above, the conviction of an offense in any of the enumerated categories is disqualified. There is no restriction upon the dissemination of conviction data. The ordinance provides further, that no person whose previous record as a law violator is such, in the opinion of the chief of police, as to render the applicant unfit for the occupation. Although the disqualification is somewhat elastic, and may vest a questionable breadth of discretion in the chief, we are concerned only with the use of criminal history information. So far as concerns the applicant's previous law violation record, the chief is empowered to exercise his judgment based upon information available to that official, and who must certify to the city clerk that the applicant is or is not fit, in his opinion, for the occupation. This certification does not on its face entail the release to the city clerk of substantive conviction data, but only the chief's determination based on information available to that officer. The role of the city clerk in the issuance of the license appears to be solely ministerial; that is, if the chief certifies that the applicant is fit, the clerk shall issue the license. If the chief does not so certify, the clerk shall not issue the license. Thus, under the terms of this particular ordinance, there is no occasion for dissemination of substantive criminal nonconviction data by the Department to any official outside it. Failure or refusal by the chief to certify that an applicant is a "fit person" to operate a taxicab may be deemed inferentially to confirm the existence of criminal history record information concerning the applicant. This is not necessarily so, however, for the chief

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is empowered to deem an applicant an "unfit person" for any of three reasons, only one of which relates to the existence of a criminal history record.

If an applicant is not deemed a "fit person" by the chief, and the clerk thereupon refuses to issue a license, it may be that the applicant may wish to appeal that decision and the correctness of the basis therefor, in which instance other questions of access may arise.

To recapitulate, under the new modified regulations, release of nonconviction data may be made to individuals and agencies "for any purpose authorized by . . . ordinance." Thus, release of such data to a city official is authorized when made for the purpose of enabling that official to discharge a duty imposed upon him or her by city ordinance, and access to such information is necessary therefor. We construe the quoted language to authorize dissemination to a city officer when made to be used to serve a purpose, responsibility, or duty of such city officer which is authorized by city ordinance. In the instance of the specific ordinance discussed above, no city officer other than the chief of policy is vested with the power to determine whether an applicant is a "fit person" to operate a taxicab, and thus, there appears to be no warrant for dissemination of nonconviction data beyond the Department itself.

Yours very truly,



CURT T. SCHNEIDER
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