



STATE OF KANSAS

Office of the Attorney General

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Attorney General

October 20, 1977

ATTORNEY GENERAL OPINION NO. 77-343

The Honorable William M. Eddy
State Representative
District 28
8009 Belinder
Leawood, Kansas 66206

Re: Police Records--Right Of Access--Municipal Court
Clerks And Mayors

Synopsis: Clerks of municipal courts may have access to criminal justice information which is subject to regulations adopted by the United States Department of Justice when and only when specifically authorized and directed to obtain specific data by the municipal judge. The mayors of Kansas municipalities are not entitled to access to such data solely by reason of the official duties of their offices.

* * *

Dear Representative Eddy:

You inquire, first, whether under the laws of the State of Kansas relating to the right of privacy, a duly sworn municipal court clerk or assistant municipal court clerk may have access to police records. Secondly, you ask whether a mayor, specifically charged by state law with certain responsibilities in law enforcement, may have access to police records.

The term "police records" can have many meanings. It is an all-inclusive term which may include records of arrest, records of conviction, and other types of records, such as police accident reports. The spirit of the Privacy Act of 1974, Public Law 93-579; 88 Stat. 1896, as amended, 5 U.S.C.A. § 552a, is to assure that certain kinds of records which are maintained on persons are

readily accessible to those who are affected, and to prevent the wholesale and promiscuous dissemination of such records, including, arrest records not resulting in conviction. The Privacy Act of 1974, was enacted to safeguard such individual privacy and the misuse of federal records, and to provide that individuals be granted access to records concerning them which are maintained by federal agencies. However, the Act itself contains some specific exemptions from its coverage. Title 5, U.S.S.A. § 552a(j) states thus:

"The head of an agency may promulgate rules . . . if the system of records is . . . (2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminal, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage or the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

Further, Subsection (k) empowers the head of an agency to promulgate rules to exempt any system of records within the agency from the coverage of the Act if the system of records is

"(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)."

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Therefore, criminal intelligence information is not freely disseminable nor freely reachable by even the individual to whom it pertains because of these general and specific exemptions. These exemptions from the coverage of the Privacy Act, which itself is an adjunct or addition to the original Freedom of Information Act, embodies the policy and the spirit of the decisions that arose under the Freedom of Information Act, holding that "information contained in an investigatory file originally compiled for law enforcement purposes remains exempt from disclosure under the Freedom of Information Act, even though use for law enforcement purposes is no longer contemplated." See Weisberg v. U.S. Department of Justice, 1973 App. D.C., 489 F.2d 1195, and Aspin v. Department of Defense, 1973 App. D.C., 491 F.2d 24.

The Department of Justice has promulgated rules pursuant to its authority under the Privacy Act by which law enforcement communities having access to the Department of Justice - F.B.I. National Criminal Information Center become governed, to implement the policy and spirit of the Act. Those rules may be found at Title 28, Ch. 1, Part 20, C.F.R. The original regulations were promulgated and published at 40 F.R. 22114. Subsequent to the original promulgation on May 20, 1975, hearings were held in November and December of 1975. Following the hearings, the regulations were amended and the present, amended regulations appear at 41 F.R. 11714. Subpart B. Section 20.20 states thus:

"(A) The regulations in this subpart apply to all state and local agencies and individuals collecting, storing or disseminating criminal history record information processed by manual or automated operations for such collection, storage or dissemination has been funded in whole or in part with funds made available by the law enforcement assistance administration subsequent to July 1, 1973, pursuant to Title 1 of the Act. Use of information obtained by the F.B.I. Identification Division or the F.B.I./N.C.I.C. System shall also be subject to limitations contained in Subpart C." [Emphasis Supplied.]

This is the necessary connection whereby criminal records maintained by the Kansas Bureau of Investigation and any state or local agency which participates with the Kansas Bureau of Investigation in N.C.I.C. information exchange, or which has received

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federal funds, are governed by these regulations. Further, Subsection 20.21 (b) requires that any agency governed by the regulations insure that dissemination of non-conviction data has been limited, whether directly or through any intermediary, only to (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; and subsection (c)(3) provide that subsection B does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by state law, executive order, local ordinance, court rule, decision or order.

What this means, then, is that any state statute, which either puts stricter limitations on dissemination or specifically empowers some other official or governing body to have access to that information, and which places further restrictions on the dissemination of such information is not affected by the federal regulation. The same holds true for local government ordinances. Further, more in point to your question, the rules and regulations clearly place the courts within the criminal justice community, in so far as the applicability of the regulations or the exemptions from it, thereby placing the municipal clerks, acting with the authority of the court, to have access to criminal record information.

K.S.A. 12-4108 provides in pertinent part thus:

"The governing body of each city may provide for the office of clerk of the municipal court. The municipal judge shall appoint such clerk or if no clerk is provided for, the judge shall also serve as clerk. The clerk shall issue all process of the court, administer oaths, file and preserve all papers, docket cases, and set same for trial and shall perform such further acts as may be necessary to carry out the duties and responsibilities of the court." [Emphasis supplied.]

The issuance of process, the administration of oaths, the filing and preservation of documents, and the scheduling of trials are not duties which involve or require access to confidential criminal justice information in the course thereof. These statutory responsibilities of the office do not, in and of themselves, justify a conclusion that access to such information is necessary

therefor. The clerk is authorized to "perform such further acts as may be necessary to carry out the duties and responsibilities of the court." In my judgment, the clerk of a municipal court is authorized access to criminal justice information when and only when specifically authorized and directed to obtain specific data upon the specific request of the municipal judge. As indicated above, the statutory duties of the office do not, in and of themselves, warrant a conclusion that such access is ordinarily necessary for the discharge of the duties thereof. I think such access is justified under Kansas law only on the specific case-by-case authority of the judge of the municipal court, as stated above.

You raise the further question whether the mayor of a Kansas municipality is a member of the criminal justice community, by virtue of his or her office. Concerning cities of the first class, e.g., K.S.A. 13-502 provides thus:

"The mayor shall preside at all meetings of the council, . . . and shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this act are complied with."

Further, K.S.A. 13-508 provides that the "mayor shall be a conservator of the peace throughout the city . . ." K.S.A. 13-512 provides in pertinent part thus:

"The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he or she shall cause all subordinate officers to be death [sic] with promptly for any neglect or violation of duty. The mayor shall have such jurisdiction as may be vested in him or her by ordinance over all places within five miles for the corporate limits of the city for the enforcement of any health or quarantine ordinance, or regulation thereof."

Similar language concerning the mayor of cities of the second class, directing the mayor to "take care that the ordinances of the city . . . are complied with," appears at K.S.A. 14-301, and 307. Like language respecting the mayors of cities of the third class appears at ch. 15, art. 3, K.S.A.

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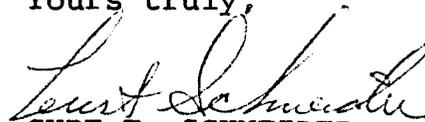
The statutory obligation of the mayor to be "active and vigilant" that all ordinances of the city are enforced and complied with does not necessarily constitute the mayor of law enforcement official. The Kansas criminal code, at K.S.A. 21-3110(10) and the Kansas code of criminal procedure, at K.S.A. 22-2202(11) defines the term "law enforcement officer" as

"any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof."

In cities with a mayor-council form of government, for example, the marshal or chief of police, and subordinate police officers, are ordinarily appointed by the mayor, with the consent of the council. See, e.g., K.S.A. 15-204. The statutory responsibility of the mayor for the vigilant and earnest enforcement of municipal ordinances generally does not constitute the mayor a member of the municipal police department, vested with the power and authority to make arrests, execute search warrants, and the like, for violations of penal ordinances of the city. The general civil authority of the mayor does not, in my judgment, justify a conclusion that the position is itself, by virtue of this general statutory supervisory responsibility for municipal government, within the criminal justice community, and in my judgment, the mayor of a Kansas municipality is not entitled, merely by virtue of that office, to access to criminal justice information.

As a final caveat, it should be noted that the term "police records" does not include accident reports which are required to be filed with the Division of Vehicles, pursuant to K.S.A. 8-1611. The information in those reports is not privileged nor confidential. Further, the Department of Justice regulations described above place no limitation whatever on the dissemination of conviction data.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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