



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 23, 1978

ATTORNEY GENERAL OPINION NO. 78- 28

Mr. Dennis W. Moore
District Attorney
10th Judicial District
Johnson County Courthouse
Post Office Box 728
6th Floor Tower
Olathe, Kansas 66061

Re: Law Enforcement--Privacy--Radio Transmissions

Synopsis: The use of codes to transmit non-conviction data for investigative or intelligence purposes by voice over the radio appears to be a reasonable precaution to be taken and within the guidelines set forth by the Department of Justice regulations governing the dissemination of criminal history record information as defined therein.

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Dear Mr. Moore:

You have forwarded to us a letter from the Lenexa Police Department inquiring whether the use of uncoded (scrambled) radio transmissions to disclose intelligence data is prohibited by Federal regulations or the State of Kansas Criminal History Record Information plan. You inquire whether the Lenexa Police Department may continue to disclose information, using normal radio transmissions, that is based on non-conviction data. The examples used in your request include describing subjects as "intelligence subject, narcotics user, narcotics dealer" when such disclosure is made in coded form such as "10-95 B3, 10-95 B4, 10-95 B5". The disclosures you describe are largely the dissemination of intelligence and/or investigative information. Such

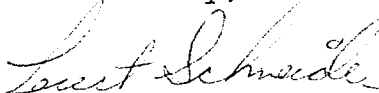
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information is not restricted by the Federal regulations for use within the law enforcement community, and may continue to be disseminated by your present procedure.

The regulations do restrict the dissemination of the non-conviction data itself, 28 Code of Federal Regulations, Chapter 1, Part 20, Subsection 20.21 (b), among members of the general public. Uncoded voice transmission over radio links are easily intercepted and it is unlikely that such transmissions may be protected to the extent required by the regulations. Therefore, dissemination of criminal history record information (including arrests not resulting in conviction) in raw data form over voice radio transmission is prohibited except when necessary to protect the safety of the officer. The suggestion by Supervisor Judy Hoskins of the Lenexa, Kansas, Police Department that such information be coded and that the codes be changed periodically to insure the security of the information has merit. Certainly, there is a valid interest in the use of such information by law enforcement officers in the everyday business of investigating possible criminal activities. The use of such codes appears to be a proper method to avoid the general publication to members of the general public of information carrying social opprobrium. Law enforcement officials should do everything in their power to carry out their responsibilities branding them, e.g., as a "narcotics user or a narcotics dealer". Such was the warning set forth in Mr. Justice Vernon's separate opinion in the case of Paul v. Davis, citation 424 U.S. 693, 96 Supreme Court 1155, 27 L.Ed.2d 405, 425 to 426.

In summary, the use of codes to transmit non-conviction data for investigative or intelligence purposes by voice over the radio appears to be a reasonable precaution to be taken and within the guidelines set forth by the Department of Justice regulations governing the dissemination of criminal history record information as defined therein. (See 41 Federal Register 11714, et seq.)

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:MGM:jj