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February 7, 1979

ATTORNEY GENERAL OPINION NO. 79- 17

Mr. Laurence E. Martin
Sheriff of Marshall County
Marysville, Kansas 66508

Re: Laws, Journals and Public Information -- Records Open to
Public -- Official Public Records Open to Inspection.

Synopsis: Law enforcement agencies are required by law to maintain a permanent record of all felony offenses reported or known to have been committed within their jurisdiction, and these records are official public records which shall be open for inspection by any citizen.

Reports, memoranda, or other internal government documents made by officers in connection with the investigation or prosecution of a case are not public records and are not open to public inspection.

Motor vehicle accident reports are official public records and shall be open for public inspection.

* * *

Dear Sheriff Martin:

K.S.A. 1978 Supp. 45-201(a) provides:

"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

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district court concerning proceedings pursuant to the juvenile code 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, and those in charge of such records shall not refuse this privilege to any citizen."
(Emphasis supplied.)

This section provides the foundation for the law concerning public records, and as indicated, this law is controlling unless superceded by other law or directive authorized by law. The key language in the foregoing statute indicates that only those records which are required by law to be kept and maintained are subject to the provisions of the section.

Since your inquiry concerns burglary reports, theft reports and accident reports, it is necessary to examine the statutes which deal with maintenance of records on these particular reports. Subsection (a) of K.S.A. 21-2501 states:

"(a) 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."
(Emphasis supplied.)

The language of K.S.A. 21-2501(a) clearly mandates that law enforcement agencies maintain permanent records of all felony offenses; therefore, reports of burglaries and felony thefts, on forms approved by the attorney general, would constitute records which are required by law to be kept and maintained. As such, these reports would be subject to the provisions of K.S.A. 1978 Supp. 45-201(a) and should be open for personal inspection by any citizen.

While the provisions of K.S.A. 1978 Supp. 45-201(a) would require that records of all reported or known felony offenses be open for inspection, it does not apply to reports or those portions of reports, memoranda, or other internal government documents made by officers in connection with

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the investigation or prosecution of a case. The private, confidential nature of investigative reports and files is stated in K.S.A. 22-3212(2), which deals with discovery and inspection in criminal proceedings. K.S.A. 22-2312(2) provides:

"[T]his section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case"

Further support for the opinion that investigative reports and files are not within the scope of K.S.A. 1978 Supp. 45-201(a) is found in Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911, 919, 529 P.2d 666 (1974), in which the Supreme Court of Kansas considered the scope of K.S.A. 45-201 and stated:

"We hold this statute is inapplicable to the investigation files of an administrative agency such as the Kansas Commission on Civil Rights. . . . In our judgment, however, it was not the intention of the legislature to require the commission to open its files to public scrutiny at the investigation or conciliation stage."

At page 920 the Court further states:

"We conclude that the Commission is not required by 45-201 as a matter of law to open its investigation files for public inspection."

Law enforcement investigative reports and files are virtually identical to the investigation files involved in Atchison in that they both contain matter concerning alleged unlawful activity. For that reason in conjunction with the language of K.S.A. 22-3212(2), it is our opinion that law enforcement investigation reports and files are not open to public inspection.

In the event that a single report form contains both the material which is subject to K.S.A. 1978 Supp. 45-201(a) (records of felony offenses or misdemeanors involving violations of Article 25 or Article 26 of Chapter 65 of Kansas statutes annotated) and material which is exempt from public disclosure (reports, memoranda, or other internal government documents made by officers in connection with the investigation or prosecution of a case), then only that portion of the report form which is subject to K.S.A. 1978 Supp. 45-201(a) must be made available for inspection.

You have further inquired whether motor vehicle accident reports which are filed in your office are public records open to inspection by the public. K.S.A. 8-1611 provides:

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"(a) 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 investigation of the accident.

"(b) Such written reports required to be forwarded by law enforcement officers and the information contained therein shall not be privileged or held confidential."

Although the language of K.S.A. 8-1611 does not require that local law enforcement agencies maintain a permanent record of motor vehicle accident reports, it does indicate that the contents of these reports are not privileged or confidential. The intent of the legislature concerning the contents of accident reports is further stated in K.S.A. 1978 Supp. 74-2012 which provides:

"All records of the division of vehicles pertaining to title, registration, licenses, dealers, drivers' licenses and accident reports shall be public records and open to inspection by the public."

When the foregoing statutory provisions are construed in light of K.S.A. 1978 Supp. 45-201, it is our opinion that the accident report files of law enforcement agencies should be open for inspection by the public. Those records which are open to public inspection when maintained by a state agency are similarly open for public inspection when maintained at the local level. For the foregoing reasons, it is our opinion that if your office maintains a permanent record of accident reports, that record is subject to K.S.A. 1978 Supp. 45-201 and must be open for public inspection.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:may