



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 84- 124

The Honorable Ben Vidricksen  
State Senator, 24th District  
713 N. 11th  
Salina, Kansas 67401

Re: Laws, Journals and Public Information -- Records Open  
to Public -- Rosters of Inmates Not Subject to  
Exception for Criminal Investigation Records

Synopsis: Subject to certain exceptions, disclosure of criminal  
investigation records is not required by the Kansas  
Open Records Act, pursuant to L. 1984, ch. 282,  
§4(a)(1). One such exception involves rosters of  
inmates in jails or correctional facilities [L. 1984,  
ch. 187, §3(b)], leaving such rosters subject to the  
general provisions of the act which require records  
to be open. Inmate rosters are required by statute  
to be kept (K.S.A. 19-1904), and the practice of  
failing to record the names of persons arrested and  
placed in jail would constitute a violation of both  
this statute and, indirectly, the open records act.  
Cited herein: K.S.A. 19-1904, 21-2501a, L. 1984, ch.  
187, §§3, 8; L. 1984, ch. 282, §4.

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Dear Senator Vidricksen:

As State Senator for the 24th District, which includes Saline  
County, you request our opinion on a question concerning the  
application of the Kansas Open Records Act to rosters of inmates

in county jails. Specifically, you inform us that on at least one occasion the name of a person arrested for a felony was not entered on the roster of inmates until the following Monday, the arrest having been made on a weekend. While the roster was open to members of the press and electronic media, such access was not helpful due to the non-entry of the suspect's name.

As amended by the 1984 Legislature, the Kansas Open Records Act sets forth a number of different records which a "public agency shall not be required to disclose." (L. 1984, ch. 282, §4). Included among these exceptions to the general rule that public records be open are "criminal investigation records," which are exempted pursuant to section 4(a)(10). This type of record is defined by section 3(b) of L. 1984, ch. 187 to include:

"records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701 and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405 and amendments thereto."  
(Emphasis added.)

As the underscored language above notes, the exclusion of criminal investigation records does not have the effect of removing all law enforcement documents from the scope of the open records act, for traffic records, police blotters and rosters of inmates are not considered to be criminal investigation records, and so remain open.<sup>1</sup> It is the inmate roster provision which is applicable here, for once an individual is taken into custody pursuant to an arrest, there will probably be at least a short period of time when he or she is held in the county jail. Of course, if the keeping of such a log was an optional procedure, the fact that names were omitted would not be a violation of the open records act, since access to the log, albeit an incomplete one, would still be available.

However, under the provisions of K.S.A. 19-1904, the keeping of a roster of inmates in a county jail is not optional. This statute, which has been contained in the laws of this state since 1868, provides that:

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<sup>1</sup>In addition, our office has taken the position that the front page of the standard offense report required by K.S.A. 21-2501a should be open to members of the media and the general public.

"The sheriff of each county must keep a true and exact calendar of all prisoners committed to the county jail, which calendar must contain the names of all persons who are committed, their place of abode, the time of their commitment, the time of their discharge, the cause of their commitment, the authority that committed them, and the description of their persons; and when any person is liberated, such calendar must state the time when and the authority by which such liberation took place; and if any person escape, it must state particularly the time and manner of such escape."

Although the language of the statute uses the antiquated term "calendar" instead of roster, the two words both refer to a list of prisoners in the custody of the sheriff. Black's Law Dictionary, Revised 4th Edition, p. 256 (1951). Both the name of the person committed and the time of commitment are to be noted, with the statute phrased in the terms of a duty ("must keep") which leaves no room for discretion.

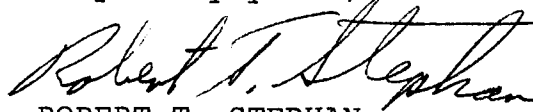
In view of this duty, the failure of a sheriff's office to promptly record the name of the person committed to the county jail, together with the time, cause, and other information required by K.S.A. 19-1904, would be a violation of the statute. Once such information is recorded, it becomes subject to the open records act, and a refusal to release the name and other included information would be in violation of the act, and would trigger the procedures for release under L. 1984, ch. 187, §8. We note that if a court finds that a denial of records was made without good faith or a reasonable basis in fact or law, it may award attorney's fees to the prevailing party. L. 1984, ch. 187, §8(b). While no penalties are specifically provided for a violation of K.S.A. 19-1904, a failure to comply could subject the sheriff, as an elected official, to a mandamus proceeding under K.S.A. 60-801 et seq.

In conclusion, disclosure of criminal investigation records is not required by the Kansas Open Records Act, pursuant to L. 1984, ch. 282, §4(a)(1). However, an exception is made for rosters of inmates in jails or correctional facilities [L. 1984, ch. 187, §3(b)], leaving such rosters subject to the general provisions of the act which require records to be open. Inmate

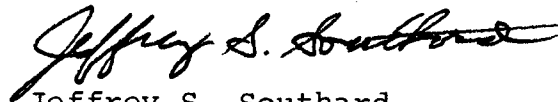
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rosters are required by statute to be kept (K.S.A. 19-1904), and the practice of failing to record the names of persons arrested and placed in jail would constitute a violation of both this statute and, indirectly, the open records act.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



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RTS:JSS:crw