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ATTORNEY GENERAL OPINION NO. 87- 145

Harold T. Walker
City Attorney
Ninth Floor, Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Criminal Procedure -- Criminal History Record
Information -- Dissemination of Criminal History
Record Information; Disclosure of Pending Charges
and Scheduled Court Date

Laws, Journals and Public Information -- Records
Open to Public -- Disclosure of Pending Charges and
Scheduled Court Date

Synopsis: Documents stating the charges filed against
individuals in municipal court and specifying
scheduled court dates are records available to the
public under the Kansas Open Records Act. The
custodian of these records has no discretion to
withhold this information from public inspection.
Cited herein: K.S.A. 1986 Supp. 21-3827;
22-4701; K.S.A. 22-4704; K.S.A. 1986 Supp.
22-4705; K.S.A. 22-4707; 45-215; 45-216; 45-217;
45-221, as amended by L. 1987, ch. 176, § 4.

Dear Mr. Walker:

As the attorney for Kansas City, Kansas, you request our
opinion concerning the Kansas Open Records Act (KORA),
K.S.A. 45-215 et seq. Specifically, you ask whether the
clerk of the municipal court and other city employees and

officials must disclose records stating charges filed in municipal court and scheduled court dates.

Under the KORA, unless otherwise provided by law, public records of public agencies must be available to any person upon request. K.S.A. 45-216. "Public record" means "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." K.S.A. 45-217(f) (1). "Public agency" is defined as:

"the state or any political or taxing subdivision of the state, or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state."
K.S.A. 45-217(e) (1).

Thus, the city attorney's office, municipal court clerk's office, and other city government offices are public agencies which must provide access to their public records. Municipal court judges, however, are excluded from the definition of public agency. K.S.A. 45-217(e) (2).

Not all public records are required to be open for public inspection. K.S.A. 45-221(a) (1), as amended by L. 1987, ch. 176, § 4, provides that records, the disclosure of which is prohibited or restricted by law, are not subject to disclosure under the KORA. In addition, K.S.A. 45-221(a) (2)-(36), as amended by L. 1987, ch. 176, § 4, lists records which the public agency has discretion to keep confidential. You ask if the city offices may refuse to disclose the information in question on the basis of exception (10), criminal investigation records. The KORA defines "criminal investigation records" as follows:

"'Criminal investigation records' means 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. . . ." K.S.A. 45-217(b).

A "criminal justice agency" is

"any governmental agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions." K.S.A. 1986 Supp. 22-4701(c).

Municipal police departments, municipal courts, and clerks of municipal courts are criminal justice agencies when they "[exercise] jurisdiction over criminal matters or criminal history record information." K.S.A. 1986 Supp. 22-4701(c). Charges brought against an individual in municipal court may be the result of a criminal investigation. However, we are in agreement with your conclusion that a complaint filed in municipal court and a document specifying the court date are not investigation records, as that term is defined K.S.A. 45-217(b). None of the exceptions listed in K.S.A. 1986 Supp. 45-221(a), as amended, appear to apply in this case to exempt the information from mandatory disclosure.

You question the applicability of the Criminal Record Information Act, K.S.A. 22-4701 et seq., which restricts the dissemination of "data initiated or collected by a criminal justice agency on a person pertaining to a reportable event." K.S.A. 1986 Supp. 22-4701(b).

"A criminal justice agency and the central repository may not disseminate criminal history record information except in strict accordance with laws including applicable rules and regulations adopted pursuant to this act." K.S.A. 22-4707(a).

By definition, criminal history record information does not include "court records of public judicial proceedings, or published court opinions. . . ." K.S.A. 1986 Supp. 22-4701(b)(3). In addition, filing criminal charges is not listed as an event required to be reported under the Act. See K.S.A. 1986 Supp. 22-4705. We think it is clear that a complaint filed in municipal court stating the charges filed against an individual and the scheduled court date are not

criminal history record information protected from public disclosure.

A fundamental concept of our form of government is public trials to allow an accused to publicly face his or her accusers. This interest would not be served by denying the media and other persons access to information such as the charges filed and the scheduled court date. The KORA follows the basic premise of open, public trials. Since the records in question are not prohibited by statute from being disclosed and are not listed as records which may be kept confidential, public agencies must disclose the information upon request. "The custodian of nonconfidential official public records has no discretion under [the KORA] to withhold those records from public inspection." State ex rel. Stephan v. Harder, 230 Kan. 573, Syl. ¶ 5 (1982).

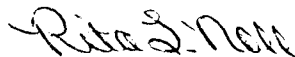
It is important to remember, however, that the crime "unlawful disclosure of a warrant" prohibits disclosure, before execution of a warrant, of a complaint which led to the issuance of an arrest warrant. K.S.A. 1986 Supp. 21-3827. Once the warrant has been executed, the complaint is no longer confidential and must be disclosed upon request. See Attorney General Opinion No. 87-100.

In summary, documents stating the charges filed against individuals in municipal court and specifying scheduled court dates are records available to the public under the Kansas Open Records Act.

Very truly yours,



ROBERT T. STEPHAN
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Rita L. Noll
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