



*Withdrawn
See 77-52*

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 17, 1990

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 90- 136

Mr. Dennis R. Taylor
Acting Secretary
Kansas Department of Social and
Rehabilitation Services
915 S.W. Harrison
Docking State Office Building
Topeka, Kansas 66612-1570

Re: Public Records, Documents and Information--Records
Open to Public--Certain Records Not Required to be
Open; Personnel Records of State Agency;
Administrative Regulations Closing Personnel Records

Crimes and Punishments--Identification and
Detection of Crimes and Criminals--University of
Kansas and State Departments to Assist Law
Enforcement Officers and Coroners; Access to State
Agency Personnel Record Closed by Administrative
Regulation

Synopsis: K.S.A. 1989 Supp. 45-221(a)(4) permits
discretionary closure of personnel records, with
the information excepted therein. K.A.R. 1990
Supp. 1-13-1a represents an exercise of this
discretionary authority by the department of
administration with regard to records subject to
the authority of that agency. Home addresses and
telephone numbers of state employees that are only
contained in personnel records may be permissibly
closed unless some other law requires disclosure.
Whether K.S.A. 21-2502 requires disclosure of
personnel records must be determined on a
case-by-case basis. Cited herein: K.S.A. 21-2502;

45-217; K.S.A. 1989 Supp. 45-221; K.A.R. 1990 Supp.
1-13-1a.

* * *

Dear Mr. Taylor:

As acting secretary of the Kansas Social and Rehabilitation Services (SRS) you request our opinion on whether the provisions of K.S.A. 21-2502 require an agency to provide sheriff departments with the home addresses and telephone numbers of state employees. You cite K.S.A. 1989 Supp. 45-221(a)(4) and K.A.R. 1-13-1a(d), (1)-(6), as authority for closure of such records.

K.S.A. 1989 Supp. 45-221(a)(4) provides:

"(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

. . . .

"(4) Personnel records, performance ratings or individuals identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such."

Thus, with the exception of the names, positions, salaries and lengths of service of officers and employees of public agencies, personnel records may be discretionarily closed unless disclosure is otherwise required by law. However, not every list of names and addresses is a personnel record. Attorney General Opinion No. 89-106, a copy of which we enclose for your information, extensively discussed directories of employees home addresses and phone numbers made available to all staff. It was our opinion that the list in question was not a personnel record, and thus, not permissibly closed pursuant to K.S.A. 1989 Supp. 45-221(a)(4). In responding to a request for a record a public agency must first ascertain whether the record falls within one of the exceptions set forth at K.S.A. 1989 Supp. 45-221. If it is

not a personnel record, or some other permissibly or mandatorily closed type of record, it must be made available upon request. The custodian, as defined by K.S.A. 45-217(c) and (d), is empowered to discretionarily close the records set forth in K.S.A. 1989 Supp. 45-221. Assuming that the record in question is in fact a personnel record, we must next determine if the custodian of that record has discretionarily chosen to close the record. It appears that the Department of Administration has made the decision to discretionarily close personnel records subject to the authority of that agency. K.A.R. 1990 Supp. 1-13-1a states:

"(b) Except as otherwise provided in this regulation, information contained in each state employee's official personnel file shall not be open to public inspection."

Thus, the Department of Administration has discretionarily closed records over which that agency has authority. K.A.R. 1990 Supp. 1-13-1a(d) goes on to permit disclosure of personnel records to certain entities:

"(d) When individuals from the following agencies, in carrying forth their official duties, establish a need for information contained in employees' official personnel files, access to the information shall be permitted to personnel from the following agencies:-

"(1) The Kansas department of administration;

"(2) the Kansas attorney general's office, including the Kansas bureau of investigation;

"(3) the federal equal employment opportunity commission and Kansas commission on civil rights;

"(4) the Kansas civil service board;

"(5) legislative post audit; and

"(6) an employee's employing state agency."

This regulation does not permit disclosure to county sheriffs of personnel records. If the records in question are personnel records and are subject to the control and authority of the Department of Administration, the record custodian has closed such records pursuant to K.A.R. 1990 1-13-1a. If the record is a personnel record, but not subject to K.A.R. 1990 1-13-1a, the custodian may discretionarily close personnel records pursuant to K.S.A. 1989 Supp. 45-221(a)(4). We must therefore determine whether other state law requires disclosure of such records.

You cite K.S.A. 21-2502 as the authority relied upon by sheriffs requesting home addresses and telephone numbers of state employees from personnel records otherwise closed pursuant to K.S.A. 1989 Supp. 45-221(a)(4) and K.A.R. 1990 Supp. 1-13-1a. This statute provides:

"It shall be the duty of the university of Kansas, the secretary of health and environment, and all other state departments and institutions, free of charge or reward, to cooperate with the law-enforcement officers of the state, and with the coroners, and to render to them such service and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime, disease and the detection, apprehension, identification and prosecution of criminals." (Emphasis added).

Thus, the legislature has provided law enforcement officers with a source of assistance in "matters relating to or that would aid in controlling crime . . . and the detection, apprehension, identification and prosecution of criminals." Obtaining the home address and phone number of a state employee could conceivably in some circumstances aid in the detection or apprehension of a criminal. K.S.A. 21-2502 requires state departments to cooperate with and render services and assistance in order to promote such detection or apprehension. However, not every use of or request for state employees' home addresses or telephone numbers will necessarily relate to or aid in the manner set forth in K.S.A. 21-2502.

If a record is not a personnel record, or some other type of permissibly closed record, it should be released. Before releasing personnel records, which are otherwise permissibly closed, it would be appropriate for a state agency to request information concerning the proposed use of the record in order to determine if the terms of K.S.A. 21-2502 apply. If, based upon that information, the state agency then believes that K.S.A. 21-2502 does not apply in a specific situation, it may be necessary for a county sheriff to subpoena the records pursuant to K.S.A. 45-215 et seq. The agency may then be required to give the court the sealed record and the court may determine whether a specific record must be disclosed because it will in fact result in the assistance described in K.S.A. 21-2502.

In summary, K.S.A. 1989 Supp. 45-221(a)(4) permits discretionary closure of personnel records, with the exceptions contained therein. However, not every record or list of home addresses and telephone numbers is automatically a personnel record. If such a list is in fact a personnel record, K.S.A. 1989 Supp. 45-221(a)(4) permits discretionary closure of personnel records. K.A.R. 1990 Supp. 1-13-1a represents an exercise of discretionary authority by the Department of Administration with regard to personnel records subject to the custodial authority of that agency. This regulation limits disclosure of personnel records. K.S.A. 21-2502 may nevertheless require mandatory disclosure of an otherwise permissibly closed personnel record if the terms of that statute apply to a specific situation. However, applicability of K.S.A. 21-2502 must be determined on a case-by-case basis.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Theresa Marcel Nuckolls
Assistant Attorney General