



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 10, 1977

ATTORNEY GENERAL OPINION NO. 77- 188

Colonel William L. Albott
Director
Kansas Bureau of Investigation
3420 Van Buren
Topeka, Kansas

Re: Defense Investigative Service's accessibility to criminal history record information on file with the Kansas Bureau of Investigation, Sheriff's Departments and Police Departments of Kansas

Synopsis: The Defense Investigative Service is eligible to receive criminal history record information as defined by Title 28, Chapter 1, Part 20.3(b), from law enforcement agencies in Kansas.

* * *

Dear Colonel Albott:

Under the new Department of Justice regulations, Title 28, Chapter 1, Part 20, *et seq.*, state law enforcement agencies may release criminal history record information. That is, they may, but are not required to do so. It should be understood, however, that Part 20.21(b)(4) of Title 28, which sets forth the "Limitations on dissemination," states:

"These dissemination limitations do not apply to conviction data."

Therefore, conviction data is presently disseminable to anyone.

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Further, since December 31, 1977, is the operative date when states must have their security and privacy plans in operation, and the present legislative session should produce the necessary legislation to implement the plan, this opinion, as it relates to the limitations upon dissemination can only be effective until the legislature acts. That is, the legislature could further limit disseminability, though to do so would substantially impair the every-day operations of law enforcement agencies.

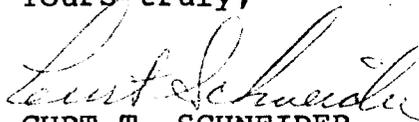
The "commentary," appended to the regulations, provides that the dissemination of *non-conviction data* is allowed if authorized by statute, ordinance, executive order, or court order. The Defense Investigative Service relies upon Executive Order 10450 as its authority to conduct investigations of present or prospective employees. In fact, the Executive Order 10450 requires the investigating agency to make "written inquiries to appropriate local law enforcement agencies" The General Counsel and Assistant Administrator of LEAA, Thomas J. Madden, in his opinion to Bernard J. O'Connell, D.I.S. Director, spoke authoritatively on the subject of D.I.S.'s eligibility to receive criminal history record information when he said,

". . . State and local criminal justice agencies would not violate the LEAA Criminal Justice Information System's regulations if they provided you criminal history record information for the purposes [for which the D.I.S. was created]."

Since LEAA drafted the regulations, and has been construing them since their inception, we believe the opinion of the LEAA General Counsel and Assistant Administrator to be highly persuasive, and we agree.

Therefore, D.I.S. is eligible to receive conviction data and non-conviction data in the furtherance of its designated investigative function, from state, county and municipal law enforcement agencies throughout Kansas.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:MGM:kj