



STATE OF KANSAS

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October 21, 1982

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ATTORNEY GENERAL OPINION NO. 82- 226

Mr. Nick Tomasic
District Attorney
29th Judicial District
Wyandotte County Courthouse
Kansas City, Kansas 66101

Re: Crimes and Punishments -- Identification and Detection of Crimes and Criminals -- Records of Felony Offenses

Laws, Journals and Public Information -- Records Open to Public -- Records of Felony Offenses

Synopsis: K.S.A. 21-2501a(a) requires that law enforcement agencies maintain permanent records of specified crimes "on forms approved by the attorney general." Such forms, therefore, constitute the records which are required to be maintained, and all information required by these forms is included in such records. Unless such records contain information which is made confidential by law or by directive authorized by law, all information contained in such records is available for public inspection under the Public Records Act (K.S.A. 45-201 et seq.). If these records contain such confidential information, the law enforcement agency having custody of the records has a duty to make available for public inspection all disclosable portions of the records in a way which protects the confidentiality of the nondisclosable information. Cited herein: K.S.A. 21-2501a, 45-201.

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Dear Mr. Tomasic:

You have inquired as to what information is required by law to be included in the permanent record which must be kept and

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maintained by law enforcement agencies pursuant to K.S.A. 21-2501a. In addition, you inquire as to what portion of the record maintained in accordance with K.S.A. 21-2501a must be open to public inspection pursuant to K.S.A. 45-201(a).

Subsection (a) of K.S.A. 21-2501a provides as follows:

"All law enforcement agencies having responsibility for law enforcement in any political subdivision of the 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 the uniform controlled substances act." (Emphasis added.)

From the foregoing, it is apparent that permanent records of the specified crimes must be maintained "on forms approved by the attorney general." Accordingly, in response to your first question, it is our opinion that the completed forms constitute the records which must be maintained by law enforcement agencies under this statute. Hence, all information required by these forms is included in such records.

As to your second inquiry, K.S.A. 45-201(a) states:

"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 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."

This statute has been considered by the Kansas Supreme Court on a number of occasions. Several of these cases have relevance to your inquiry. In Atchison, T. & S.F. Rly. Co. v. Commission on Civil Rights, 215 Kan. 911 (1974), it was held that "45-201 applies only to public records which are required by law to be kept and maintained." (Emphasis by the Court.) Id. at 919. Subsequently, in Stephens v. Van Arsdale, 227 Kan. 676 (1980), the Court construed the scope of 45-201, as

follows: "Simply stated, that statute requires all official public records to be open unless either closed by the judge or by some statute." Id. at 686. This conclusion was affirmed, in effect, by State ex rel. Stephan v. Harder, 230 Kan. 573 (1982), wherein the Court found that K.S.A. 45-201 "excepts from public disclosure records which are specifically closed by law or by directive authorized by law." Id. at 584.

Harder also contains the most comprehensive statement as to the legislative purpose underlying the Public Records Act (K.S.A. 45-201 et seq.). There, the Court stated:

"The purpose of the legislature is exceedingly clear: To subject to public view and scrutiny all of those records which the law requires public officials to keep. Sunshine is the strongest antiseptic -- its rays may penetrate areas previously closed. The legislature must have so intended when it enacted this legislation. This is not to say that all documents in public offices are open to inspection; only those required by law to be kept and maintained must be made available. The latter, however, must be open for inspection under penalty of the law." (Emphasis by Court.) 230 Kan. at 580-581.

We also note that in Van Arsdale, supra, the Court found that public access to public records is originally based in the common law. 227 Kan. at 686. Thus, it was argued in Harder, supra, that the duty, under common law, of a person seeking to examine public records to show proper "motives" and "reasons" should apply under K.S.A. 45-201, as well, so as to vest in a custodian of public records the discretion to close such records to public scrutiny. The Court rejected that argument, holding that Van Arsdale "does not stand as authority for an agency director to determine whether . . . records should be open to public inspection." 230 Kan. at 584. The Court concluded that:

"The Kansas act places no burden on the public to show a need to inspect, and requires no particular motives or reasons for inspection. It declares that all legally required records 'shall . . . be open for a personal inspection by any citizen' It gives the custodian no discretion and no choice; it imposes a duty upon the custodian, and subjects him or her to stringent penalties for noncompliance. We

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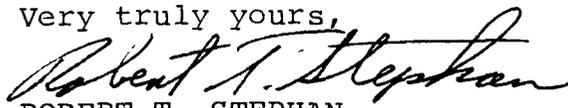
hold that the common-law restrictions on public access to open records are inapplicable under the Kansas public records inspection act." Id. at 585.

Finally, one of the issues in Harder was the public's right to inspect public records containing both confidential and non-confidential information, and we think the following statement of the Court regarding this issue has pertinence here:

"We have seen that the information requested exists as a part of official public records which are by law required to be kept and maintained. The same records, however, contain information which is by law confidential and may not be released. We think it is far more consistent with the purpose of the Kansas public records inspection act to interpret that act as we now do. We hold that the act implies a duty upon the agency to delete confidential and nondisclosable information from that which may be disclosed, and thus to carry out the act's purpose of making available for public inspection all disclosable parts of the public record. Were this not so, any record which an agency is required by law to keep could be rendered inaccessible to public scrutiny by including confidential material therein." Id. at 583.

Therefore, in light of K.S.A. 45-201 and the foregoing judicial interpretations thereof, we have concluded that: (1) The permanent records required to be maintained on forms approved by the Attorney General under K.S.A. 21-2501a(a) by a law enforcement agency of any of the governmental entities specified in K.S.A. 45-201(a), are subject to public inspection under the Public Records Act (K.S.A. 45-201 et seq.); (2) a law enforcement agency has no discretion as to the disclosure of such records; (3) unless such records contain information which is made confidential by law or by directive authorized by law, all information contained in such records is available for public inspection; and (4) if these records contain such confidential information, the law enforcement agency has a duty to make available for public inspection all disclosable portions of the records in a way which protects the confidentiality of the nondisclosable information.

Very truly yours,


ROBERT T. STEPHAN

ATTORNEY GENERAL OF KANSAS


W. Robert Alderson

First Deputy Attorney General