



STATE OF KANSAS

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February 9, 1987

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ATTORNEY GENERAL OPINION NO. 87-25

Carla J. Stovall
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P.O. Box 1931
Pittsburg, Kansas 66762

Re: Laws, Journals and Public Information -- Records
Open to Public -- Law Enforcement Records; Jail
Book, Standard Offense Report, Mug Shots

Synopsis: Under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., a record which is made, maintained, kept by, or in the possession of a public agency must be open for inspection by any person unless it falls within one of the categories of records which is not required to be disclosed or disclosure of which is specifically prohibited by statute. K.S.A. 45-217(f)(1); 45-221(a). Records compiled in the process of preventing, detecting or investigating violations of criminal law are not subject to mandatory disclosure. K.S.A. 45-221(a)(10). A "jail book" which lists persons who are placed in jail and contains information of a general nature is not a criminal investigation record and thus must be open for public inspection. The front page of the standard offense report is also subject to disclosure. Mug shots, however, are criminal investigation records which may be closed to the public. Cited herein: K.S.A. 19-1904; K.S.A. 1986 Supp. 22-4701; K.S.A. 38-1601; 38-1608; 45-215; 45-217; 45-221.

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Dear Ms. Stovall:

As County Attorney for Crawford County, you request our opinion concerning records of law enforcement agencies. Specifically, you ask whether a jail book, the standard offense report, and mug shots are records required to be open to the public.

Under the Kansas Open Records Act (KORA), K.S.A. 45-215 et seq., a public record is to be open for inspection by any person unless it falls within one of the categories of records which is not required to be disclosed or disclosure of which is specifically prohibited by statute. K.S.A. 45-221(a). A public record is defined as "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). A "public agency" is any political or taxing subdivision of the state or subordinate body thereof which receives or expends and is supported in whole or in part by public funds. K.S.A. 45-217(e)(1). County sheriffs' offices and municipal police departments are public agencies for purposes of the KORA.

Under the Juvenile Offenders' Code, K.S.A. 38-1601 et seq., records of law enforcement officers and agencies "concerning a public offense committed or alleged to have been committed by a juvenile under 16 years of age" shall not be disclosed to anyone except those persons specifically listed in the statute. K.S.A. 38-1608(a). Law enforcement officials must be careful to keep juvenile records separate and distinct from other records. As provided by this act, certain law enforcement records which may otherwise be open to the public are precluded from disclosure if they pertain to juveniles under sixteen years of age.

Records which fall into any of the categories listed in K.S.A. 45-221(a)(2)-(35) are not prohibited from disclosure, nor is it mandatory that they be disclosed. Rather, the public agency has discretion whether to make the record available to the public. One exception provides that criminal investigation records are not subject to mandatory disclosure unless so ordered by the court:

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

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"Criminal investigation records, except that the district court, in an action brought pursuant to K.S.A. 45-222, may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure:

"(A) Is in the public interest;

"(B) would not interfere with any prospective law enforcement action;

"(C) would not reveal the identity of any confidential source or undercover agent;

"(D) would not reveal confidential investigative techniques or procedures not known to the general public; and

"(E) would not endanger the life or physical safety of any person." K.S.A. 45-221(a) (10)

"Criminal investigation records" is defined 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, 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." K.S.A. 45-217(b)

Sheriffs' offices and police departments are criminal justice agencies. K.S.A. 1986 Supp. 22-4701(c). The exclusion of criminal investigation records from mandatory disclosure does not have the effect of removing all law enforcement documents from the scope of the open records act. For instance, traffic records, police blotters, and rosters of inmates are not defined as criminal investigation records and thus must be open to the public.

You inform us that the "jail book" lists, in chronological order, persons who are placed in jail. These records contain the following information: name, place of abode, date of commitment, hour of commitment, date discharged, hour discharged, cause of commitment, authority committing, authority discharging, locker number, jailer, remarks. We understand that the "remarks" column is used to note whether an individual has a detainer for another court and other such information and is not used to record personal information.

From the above description, it can be seen that the jail book contains the same information as a "jail calendar" described in K.S.A. 19-1904. This document is a roster of inmates which, in accordance with K.S.A. 45-217(b), is a public record subject to disclosure. In Attorney General Opinion No. 84-124, we noted that K.S.A. 19-1904 requires inmate rosters to be kept and concluded that 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. See 82 A.L.R. 3d 19 §18. See also Holcombe v. State, 200 So. 739 (Ala. 1941) ("jail docket" required by statute to be kept listing all prisoners in county jail is subject to public inspection); Dayton Newspaper, Inc. v. City of Dayton, 341 N.E. 2d 576 (Ohio 1976) ("jail log" listing names of prisoners, charges, dates, times, and dispositions is a public record); Florence Morning News v. Building Comm., Etc., 218 S.E. 2d 881 (S.C. 1975) ("jail book" must be open to the public).

Even though the front page of the standard offense report is not listed as an exception to the definition of criminal investigation records, our office has taken the position that this document must be made available for public inspection. See Attorney General Opinion 84-124, p. 2, n.l. Generally, the first page of most criminal investigation records is the official Kansas offense report required by K.S.A. 21-2501a and approved by this office. Information on this form includes the date, time, and location of the reported offense, the description of property involved, as well as the nature of the crime, and the name, address, and phone number of the victim, witness, or other person reporting the crime.

There is no case law in Kansas defining what constitutes a "criminal investigation record." This issue was before the court in Houston Chronicle Publishing Co. v. Houston, 531 S.W. 2d 177 (Tex. 1975) writ ref'd n.r.e. per curiam, 536 S.W. 2d 559 (Tex. 1976). In that case a newspaper publisher challenged the claim that a police department's

"offense report" was not subject to disclosure. The Texas open records statutes excepted from its general requirement of public disclosure those records of law enforcement agencies that dealt with the detection and investigation of crime. The report contained information similar to that listed on the KBI standard offense report. The Texas court noted that supplementary offense reports were frequently added and might include such information as a synopsis of a purported confession, officers' speculations about a suspect's guilt, investigating officer's views on a witness' credibility, statements by informants, ballistics reports, fingerprint comparisons, and blood and other laboratory tests, including polygraph tests, and the refusal to take such tests. 531 S.W. 2d at 179.

In Houston Chronicle the court held that the offense report was an investigation record not subject to disclosure. The court went on, however, to discuss the public's right of access to information about crime and police activities. The court reconciled the competing interests of the public's right to know and secrecy in police investigations by ruling that the public had the right to access to the front page, or a copy thereof, of the offense report. That page was to include the offense committed, location of the crime, identification and description of complainant, premises, time of the occurrence, property and vehicles involved, description of the weather, details of the offense in question, and names of the investigating officers. 531 S.W. 2d at 187.

As previously noted, records of public agencies are subject to disclosure unless otherwise provided. Information contained on the front page of the standard offense report is of a general, routine nature and does not include information obtained as part of an investigation. Since the "criminal investigation records" exception is not applicable, this document is a public record. Inclusion of the standard offense report as the first page of a criminal investigation record does not prevent disclosure of this information. K.S.A. 45-221(d) provides as follows:

"If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act."

Many police and sheriffs' offices have routinely permitted public and media access to the standard offense report. This information is often used in reporting community news. We have no evidence that this practice has interfered with law enforcement efforts. Thus, the KORA and public policy dictate the continued release of the standard offense report.

You also ask whether "mug shots" must be disclosed to the public. Photos of persons who have been arrested are compiled, generally in the form of a book, to aid in identification. Mug shots, then, are records which may be closed to the public as such records are criminal investigation records "compiled in the process of preventing, detecting or investigating violations of criminal law" K.S.A. 45-217(b). In Houston Chronicle, supra, the court held that "personal history and individual arrest records," which included such personal data as a mug shot, were records concerning the detection and investigation of crime and therefore were excepted from the open records laws.

In summary, the KORA requires public records to be open for inspection by any person unless the record falls within one of the categories of records which is not required to be disclosed or disclosure of which is specifically prohibited by statute. K.S.A. 45-221(a). Records compiled in the process of preventing, detecting or investigating violations of criminal law are not subject to mandatory disclosure. K.S.A. 45-221(a)(10). A "jail book" which lists persons who are placed in jail and contains information of a general nature is not a criminal investigation record and thus must be open for inspection by any person. The front page of the standard offense report is also subject to disclosure. Mug shots, however, are criminal investigation records which may be closed to the public.

Very truly yours,



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Rita L. Noll
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