

PUBLIC RECORDS:
KANSAS CITY POLICE DEPARTMENT:
RIGHT OF INSPECTION:

No right of inspection of police records of the Kansas City Police Department exist either under Sec. 109.180, RSMo 1959, or a common law except for those records expressly required by law to be kept.

OPINION NO. 2

March 5, 1963



Honorable W. H. Bates
Secretary
Board of Police Commissioners
Kansas City 6, Missouri

Dear Sir:

We have your request for an opinion of this office wherein you inquire whether Section 109.180, RSMo, 1961 Cum. Supp., requires that certain documents and reports used and kept by the Kansas City Police Department must be opened to public inspection. The relevant portion of that section is as follows:

"Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen."

A misdemeanor penalty is provided for any official who fails to observe the quoted provision, and Section 109.190, RSMo, 1961 Cum. Supp., guarantees the right to photograph or otherwise copy any records included under Section 109.180.

We have examined the detailed lists of the hundreds of reports and records kept by the Kansas City Police Department which you have submitted. They may be divided, roughly, into operational records and administrative records. A great variety of material is contained in each subgroup. Operational records include the basic offense, arrest and investigation reports; the reports of specialized departments dealing with such matters as homicide, vice, narcotics, arson and bombing, burglary and theft, sex offenses, traffic and safety, etc.; alias files; informers' reports; lists of known offenders; and many other too numerous to mention. Generally speaking,

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it may be said that these records deal with the basic police functions - the prevention of crime and the apprehension of offenders.

The administrative records, on the other hand, relate principally to the organization and administration of the Police Department. They are concerned primarily with internal matters such as assignments, financial affairs, research, inventories, correspondence, training, etc.

The nature of these records is relevant in the light of the statutory language which permits inspection of records (unless such inspection is elsewhere prohibited) "kept pursuant to statute or ordinance." Sections 84.350 - 84.890, RSMo 1959, setting out the organization and powers of the Kansas City Police Department, do require that certain records be kept. They are as follows:

- § 84.420.2(1) - Rules and regulations concerning the conduct of the Department.
- § 84.500(1) - Reports from the chief of police to the Board concerning the promotion, disciplining, discharge or suspension for more than fifteen days of police officers and other employees.
- § 84.500(2) - An annual report from the chief of police to the Board on the administrative and law enforcement activities of the Department with statistics of all police work.
- § 84.500(3) - An annual report from the chief of police to the Board on financial requirements for the coming year.
- § 84.730 - An annual budget estimate must be prepared by the Board.
- § 84.740 - A final budget must be prepared and adopted annually by the Board.
- § 84.750 - Vouchers, authorizing expenditures, are provided for.

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§ 84.790 - A journal of the proceedings of the Board must be kept as well as journals and books of account showing receipts and disbursements of money. Such records must always be available for inspection by the General Assembly. An annual report must be made to the Kansas City City Council setting out the number and expenses of the police force and such other matters as may be of public interest.

§ 84.840 - An annual audit of the Department's accounts must be made and published.

It is our view that the right of public inspection provided by Section 109.180 extends only to the above-listed records required to be kept by statute. Nowhere does it appear that the various operational reports which you list are kept pursuant to statute and very few of the administrative reports are so kept. This fact was noted by the Court of Appeals in *White v. Hasburgh*, Mo. App., 124 SW2d 560, where the defendant in a civil damage suit sought to introduce into evidence a police report prepared by a Kansas City police officer who investigated the automobile accident out of which the suit arose. The Court pointed out (l.c. 565): "There is no statute, or even an ordinance, providing for such reports."

Your letter directs our attention to Section 84.500, previously mentioned, which requires the preparation of an annual report, including statistics on all police work, and you state that it is necessary in order to provide the data for this report for the various units within the Department to maintain records and reports showing all of their administrative and law enforcement activities. While it may be that the preparation of the annual report is facilitated by the maintenance of these reports, it does not follow that such reports are "kept pursuant to statute."

Section 84.500(2) requires only a summary account of police activities and administration throughout the year and it would seem that this could be gathered simply from a running statistical record of numbers and types of offenses, arrests, etc., as well from information gained from individual investigative reports. Similarly, administrative data is required only in terms of totals, rather than specific transactions. Thus the statute is satisfied by a statement of the total number of offenses

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reported during the year or a statement of the total payroll, rather than a detailed account of the circumstances of each arrest or a list of the amount paid each person employed by the Department. Necessarily, a large discretion is vested in the chief of police in the manner in which he prepares the annual report and it can hardly be said the sources of the data used in compiling summaries for the report become public records by virtue of that fact. The same reasoning applies to the records used in preparing the budget estimate and final budget required by Sections 84.730 and 84.740.

An annual report is also required of the Superintendent of the State Highway Patrol by Section 43.120(5), RSMo 1959, providing that he ". . . shall make to the governor and the commission a report of the activities of the patrol and the cost thereof for the fiscal year." Yet, in *Ensminger v. Stout*, Mo. App., 287 SW2d 400, where it was sought to introduce into evidence the investigative report of a highway patrolman, the Court said (l.c. 407): "It [the report] was not required by any statute to be made or filed."

For these reasons, it is our conclusion that the only records to which the right of inspection contained in Section 109.180 applies are those expressly required to be kept by law as listed above.

However, the right to inspection of public records is one which existed under the common law of the state even before the enactment of Section 109.180. In *Disabled Police Veterans Club v. Long*, Mo. App., 279 SW2d 220, 223, the Court said:

"Generally, any writing or document constituting a public record is subject to inspection by the public. * * * *"

Moreover, the concept of a public record at common law is broader than the standard of "kept pursuant to statute or ordinance" contained in Section 109.180. In *Disabled Police Veterans Club v. Long*, supra, the Court stated (l.c. 223):

"Independently of statute the term public records covers not only papers expressly required to be kept by a public officer but all written memorials made by a public officer within his authority where such writings constitute a convenient, appropriate or customary method of discharging the duties of the office. International

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Union, etc. v. Gooding, 251 Wis. 362,
29 N.W.2d 730, 735; Conover v. Board of
Education, etc., 1 Utah 2d 375, 267 P.
2d 768, 770; People v. Shaw, 17 Cal. 2d
778, 112 P. 2d 241, 259."

We are of the view that the authors of Section 109.180 did not propose to restrict the right of inspection granted at common law but rather intended only to express that right in statutory form and provide penalties for those who would deny it. Section 109.180 is a remedial statute and should be given a liberal construction with a view towards attaining the end sought to be achieved. *City of St. Louis v. Carpenter, Mo.*, 341 SW2d 786. This is especially the case with statutes conferring the right to inspect or use public records, which should be liberally construed in favor of inspection. In *re Mosher (C.C.P.A. 1957)*, 248 F.2d 956.

The question remains, then, whether there is a right of inspection at common law of the records in question in the light of the broader common-law conception of a public record as something more than one kept pursuant to statute.

Of course, if a right of inspection is claimed under the common law, the right is subject to all of the exceptions and qualifications contained in the common law. In *Disabled Police Veterans Club v. Long*, supra, the court recognized the existence of these qualifications, although not spelling them out, saying (1.c. 223):

"This right to inspect and to copy public records is not an unlimited right. It is subject to such reasonable regulations as may be imposed to prevent undue interference with the proper functioning of the public officials involved. *State ex rel. Eggers v. Brown*, supra.

"Furthermore, public policy demands that some public records must be kept secret and free from common inspection. In certain situations public records may, in the public interest, be withheld from public inspection. It is unnecessary to consider further this common-law exception to the right to inspect public records because the

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respondents have made no serious claim to come under any common-law limitation and we are unable to discover any. They are in no position to insist that any public interest will be served by keeping the requested information secret. International Union, etc. v. Gooding, 251 Wis. 362, 29 N.W.2d 730, 736."

The case there cited, International Union v. Gooding, states as follows (1.c. 29 N.W.2d 736):

"We shall not go into the scope of the common-law right exhaustively or attempt to document our observations upon it. It is enough to say that there are numerous limitations under the common law upon the right of the public to examine papers that are in the hands of an officer as such officer. Documentary evidence in the hands of a district attorney, minutes of a grand jury, evidence in a divorce action ordered sealed by the court are typical. The list could be expanded but the foregoing is enough to illustrate that in certain situations a paper may in the public interest be withheld from public inspection. * * *"

More specifically, in Whittle v. Munshower, Md., 155 A.2d 670, 672, the court said:

" * * * But we are aware of no statutory provision that declares that reports made by state police to their superior officer, or information gathered by them in the course of their investigations of reported crimes, should be public records, or open to inspection. In the absence of statutory requirement, it is generally held that police records are confidential. See 45 Am. Jur., Records and Recording Laws, §26, p. 433. * * *"

And, finally, the general rule as to the confidentiality of police records of common law was explicitly stated in Lee v. Beach Publishing Co., 127 Fla. 600, 173 So. 440, 442, as follows:

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"The appellant contends that there are certain records in the police department of a city which must be kept secret and free from common inspection as a matter of public policy. This is true. The rule as stated in 23 R.C.L. 161, is as follows:

'The right of inspection does not extend to all public records or documents, for public policy demands that some of them, although of a public nature, must be kept secret and free from common inspection, such for example as diplomatic correspondence and letters and despatches in the detective police service or otherwise relating to the apprehension and prosecution of criminals.'

On the basis of the foregoing authorities, it is our conclusion that there is no right at common law which permits the public inspection of police records having to do with the investigation of crime and the apprehension of offenders and related police functions. Public policy requires that such matters be kept confidential.

With regard to the various administrative reports of which you inquire, it does not appear that they may properly be styled as "memorials of official actions" but relate principally to the internal organization and functioning of the Department. Mainly they are in the nature of interdepartmental memoranda and personnel and equipment reports. It is our conclusion, therefore, that the common-law right of inspection does not apply to these matters.

CONCLUSION

It is the opinion of this office that the right of inspection of records of the Kansas City Police Department provided under Section 109.180, RSMo 1959, extends only to those records expressly required by law to be kept. The right of inspection at common law, though broader than that provided by Section 109.180, contains an exception as to police records and, therefore, is also inapplicable.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Yours very truly,

THOMAS F. EAGLETON
Attorney General