

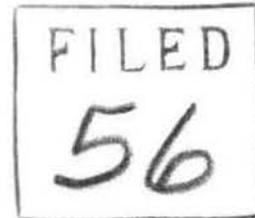
CRIMINAL LAW:
PUBLIC RECORDS:

Reports of criminal investigations and statements of suspects or defendants in criminal cases in the possession of the prosecuting attorney are not public records and need not be open for public inspection. However, a prosecuting attorney may, in his discretion, permit such inspection as he deems advisable.

OPINION NO. 56

February 2, 1965

Honorable Allen S. Parish
Prosecuting Attorney
Saline County
P. O. Box 427
Marshall, Missouri



Dear Mr. Parish:

We have your letter of January 12, 1965, requesting an opinion of this office. Your questions may be paraphrased as follows:

1. Are investigative reports in general, and particularly written or otherwise recorded statements of suspects in criminal cases, matters of public record which must be open for inspection by the general public?
2. If these items are not required to be open for public inspection, may the prosecutor permit them to be inspected by newsmen or others?

With reference to your first question, Section 109.180, RSMo 1963 Cum. Supp. provides in part 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, 1963 Cum. Supp. guarantees the right to photograph or otherwise copy any records included under Section 109.180.

A close examination of the many statutes relating to prosecuting attorneys and to criminal prosecutions generally shows that there is no statute requiring the prosecuting attorney to keep such records as the kind you describe. While it is obvious that in the preparation of the state's case, the prosecutor will necessarily collect all such investigative matter as may be needed for use in trial, it does not follow that these materials are "kept pursuant to statute" within the meaning of Section 109.180. This being the case, that section does not apply and the right of inspection guaranteed therein does not extend to these records and reports.

Moreover, an exception to the common-law right of inspection of records by the public has consistently been recognized with regard to investigative data gathered by police and prosecuting officials. In *International Union v. Gooding*, 251 Wis. 362, 29 N.W. 2d 730, 736, the court said:

"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. * * *"

The same principle was stated in *Lee v. Beach Publishing Co.*, 127 Fla. 600, 173 So. 440, 442, as follows:

"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.'"

We, therefore, conclude that statements of suspects or defendants in criminal cases are not "public records" which are subject to inspection by the general public either under Section 109.180 or under common law. It is further our view that the confidential character of these matters remains unchanged after the trial of the case has been concluded. Naturally, anything that has been disclosed at trial becomes a part of the record of the trial and, therefore, a public record.

You further inquire whether the prosecutor may permit such items to be examined by representatives of the news media or other members of the general public. Whether or not such matters shall be made public lies in the sole discretion of the prosecuting attorney. As we have previously stated, he is not required to make them open for inspection. However, he may do so if he sees fit.

There are no precise statutory or constitutional guides governing the extent to which a prosecutor may make public the contents of defendant's statements prior to trial. We would suggest that you be guided by the applicable section of the Legal Canons of Ethics, Supreme Court Rule 4.20. On this general subject, you might also consult two recent decisions of the United States Supreme Court in which convictions were reversed for reasons relating to an inflamed public opinion resulting from pre-trial publicity, *Irvin v. Dowd* 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751; *Rideau v. Louisiana*, 373 U.S. 723, 83 S. Ct. 1417, 10 L. Ed. 2d 663.

CONCLUSION

Reports of criminal investigations and statements of suspects or defendants in criminal cases in the possession of the prosecuting attorney are not public records and need not be open for public inspection. However, a prosecuting attorney may, in his discretion, permit such inspection as he deems advisable.

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

Very truly yours,


NORMAN H. ANDERSON
Attorney General