

Public Records, names/addresses of arrested juveniles

Number: INFORMAL

Date: January 31, 2003

Subject:

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Lieutenant William B. Galbraith, II
Records Custodian
Boynton Beach Police Department
Post Office Box 310
Boynton Beach, Florida 33425-0310

Dear Lieutenant Galbraith:

As records custodian of the Boynton Beach Police Department, you ask substantially the following question:

May the names and addresses of previously arrested juveniles be released without a court order to an attorney defending the city in an unrelated civil action or the city's risk manager assisting in the suit?

In sum:

Information regarding juveniles obtained pursuant to Ch. 39, F.S., is confidential and may not be disclosed except as authorized in s. 39.045, F.S., or unless released by court order.

You state that the City of Boynton Beach and several of its officers, past and present, are defendants in a civil law suit alleging, in part, the use of excessive force. The city's risk manager and the attorney representing the city in the suit have requested the names of several juveniles who were arrested in an incident unrelated to the pending suit. The case in which the juveniles were arrested, however, involved an incident in which one of the plaintiff's witnesses in the present suit was a victim. While the risk manager and the attorney have copies of the incident report resulting from the arrests, the identifying information on the juveniles has been omitted.

From the information provided, clearly, the incident in which the juveniles were arrested is in no way related to the present civil suit against the city for use of excessive force and the attorney representing the city is not acting on behalf of the police department in any suit in which the juveniles are parties.

Moreover, there is no indication that access to the information identifying the juveniles is sought pursuant to an authorized purpose in Ch. 39, F.S.

Section 39.039(1)(a), F.S., allows any law enforcement agency to fingerprint and photograph a child taken into custody upon probable cause that the child has committed a violation of law.

Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file maintained only for that purpose, with the file marked "Juvenile Confidential." These records "shall not be available for public disclosure and inspection under s. 119.07(1), but shall be available to other law enforcement agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records." [1]

If the child is not referred to a court or the child is found not to have committed a violation of law, the court may order the originals and copies of the fingerprints and photographs to be destroyed. [2] Unless otherwise ordered by the court, if a child is found to have committed an offense which would be a felony if committed by an adult, then the law enforcement agency must retain the originals and send copies to the court along with written offense report relating to the matter for which the child was taken into custody. [3] After disposition of the case, the court forwards duplicates of the fingerprints and photographs, together with the child's name, address, date of birth, age, and sex, to the Florida Department of Law Enforcement, the sheriff of the county in which the child was taken into custody, and upon request, to the law enforcement agencies of specified cities in the county of arrest. [4] These fingerprint and photograph records, however, may only be used for identification purposes.

Section 39.045, F.S., requires the court to keep records of all cases brought before it pursuant to Ch. 39, F.S., and make official records, consisting of all petitions and orders filed in a case arising pursuant to the chapter and any other pleadings, certificates, proofs of publication, summonses, warrants, and writs which may be filed therein. [5] Such official records are to be kept separate from other records of the circuit court, and with the exception of motor vehicle violations, shall not be open to public inspection, except by court order. [6]

With limited exception, [7] s. 39.045(5), F.S., provides that

"all information obtained pursuant to this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department . . . or any law enforcement agent shall be confidential and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, the Department of Corrections, the Parole Commission, the Commission on Juvenile Justice, law enforcement agents, school superintendents and their designees, and others entitled under this chapter to receive that information, except upon order of the court." (e.s.)

Thus, generally the records of children are confidential and may only be disclosed to specified individuals and entities or upon order of the court. Neither the city's risk manager, nor the attorney representing the city in the civil suit is included in the enumerated individuals or entities entitled to access to the records of children obtained pursuant to Ch. 39, F.S. Where a statute enumerates the things upon which it operates, it is ordinarily construed as excluding from its operation all things not expressly mentioned. [8] Section 39.045, F.S., specifically provides for the individuals and entities entitled to access to information relating to arrested juveniles; no others may be implied, in the absence of a court order. [9]

In AGO 88-15, this office considered whether security officers employed by a county school board who were not law enforcement officers were authorized to receive copies of juvenile

offense reports for internal school purposes.[10] In light of such officers not being law enforcement officers or any of the other enumerated individuals allowed access to such records and absent a court order, it was concluded that the security officers were not authorized to receive copies of the juveniles offense reports.

I am not aware of, nor have you drawn my attention to, any provision in Ch. 39, F.S., allowing the city's risk manager or the attorney representing the city in a civil suit unrelated to the arrest of the juveniles access to the names and addresses of arrested juveniles, absent a court order. In the absence of such statutory or judicial authorization, such records may not be released to these individuals.

It is important to note that the conclusions reached from this discussion are limited to juvenile records produced pursuant to Ch. 39, F.S., and addressed in ss. 39.039 and 39.045, F.S. In light of the specific provisions contained therein, no generalizations regarding access by employees or agents of an agency to public records held by such agency should be inferred.

I trust these informal comments will assist you in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/twd

[1] See s. 39.039(1)(a), F.S., which also provides that the court, in its discretion, may allow inspection of these records by any person upon a showing of cause.

[2] Section 39.039(2), F.S.

[3] *Id.*

[4] Section 39.039(2)(a), (b), and (c), F.S.

[5] Section 39.045(2), F.S.

[6] Section 39.045(4), F.S.

[7] Section 39.045(3), F.S., provides for the retention and sealing of records of incidents committed by a child which, if committed by an adult, would be a crime specified in ss. 110.1127, 393.0655, 394.457, 396.0425, 397.0715, 402.305(1), 409.175, and 409.176, F.S., but limits their use to screening requirements for personnel pursuant to s. 402.3055, F.S., or department rule. Section 39.045(8), F.S., allows inspection of Department of Health and Rehabilitative records upon order of the Secretary to those persons who have sufficient reason and upon such conditions and use as the Secretary or his designee deems proper.

[8] See *Thayer v. State*, 335 So.2d 815, 817 (Fla. 1976).

[9] It might be argued that the attorney and the risk manager are employees or agents for the city and, therefore, for all purposes are the city and should be allowed access to the juvenile records possessed by the city's police department. Section 39.045, however, contemplates that any agency may possess the juvenile records, but they may not be disclosed to specific personnel within such agency; *e.g.*, while juvenile records are in the possession of the Department of Health and Rehabilitative Services, s. 39.045(3), F.S., provides that the records are sealed and may only be used to meet screening requirements for child care personnel in s. 402.3055, F.S., which in turn prohibits the use of such records for any purpose other than determining if the person meets the minimum standards for good moral character for child care personnel. Use of the records by other department employees is limited to those who have need of the records to perform their official duty. This indicates that the possession of the records by an employing agency does not automatically assure access by all employees or agents of such agency.

[10] While the conclusions in AGO 88-15 were based upon an examination of s. 39.12(5), F.S., which was repealed by s. 17, Ch. 90-208, Laws of Florida, the terms of that statute are reflected in s. 39.045(5), F.S., which was created by the same law.