

Opinion No. 94-02

April 25, 1994

OPINION OF: Tom Udall, Attorney General

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TO: The Honorable Gary Don Regan, State Senator, P.O. Box 780, Hobbs, New Mexico 88241

QUESTIONS

Does the Arrest Record Information Act (NMSA 1978, §§ 29-10-1 to -8 (Repl. Pamph. 1990 & Cum. Supp. 1993)) permit law enforcement agencies to maintain the confidentiality of information in police reports regarding the identity of person arrested for or suspected of committing crimes?

CONCLUSIONS

With limited exceptions described in this opinion, information about persons arrested for or suspected of committing crimes is public.

FACTS

Some law enforcement agencies have been refusing to reveal information in police reports regarding the identity of persons arrested for or suspected of committing crimes. Their refusal is based on amendments to the Arrest Record Information Act enacted in 1993. Prior to the amendments, this information generally was made available to the public.

ANALYSIS

The Arrest Record Information Act, as amended in 1993, provides confidentiality for "[a]rrest record information that reveals confidentiality sources, methods, information or individuals accused but not charged with a crime **and** that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime." NMSA 1978, § 29-10-4 (Cum. Supp. 1993) (emphasis added). "Arrest record information" is defined as "notations of the arrest or detention or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency." **Id.** § 29-10-3. The Act specifically allows disclosure of information in certain records, including original records of entry, such as police blotters, compiled chronologically; court records; records of traffic offenses and traffic reports; and "arrest record information related to the offense for which an adult individual is currently within the criminal justice system." **Id.** § 29-10-7.

Statutes must be read in their entirety and each provision construed in connection with every other provision to produce a harmonious whole. **State ex rel. Kline v. Blackhurst**, 106 N.M. 732, 735, 749 P.2d 1111 (1988). Accordingly, the legislative purpose behind Section 29-10-4, as amended, cannot be gleaned from reading that provision in isolation; Section 29-10-4 must be interpreted in light of the entire Act.

A close reading of the Act shows that it provides only limited protection for certain arrest record information. First, **all** information, including arrest record information otherwise protected by the Act, is available for public inspection if contained in an original record of entry such as a police blotter¹ or in the other records listed in Section 29-10-7 (A).

Second, for records other than those listed in Section 29-10-7, the Act protects some arrest record information, but only if it pertains to persons " **charged** with the commission of any crime." NMSA 1978, § 29-10-4 (emphasis added). Thus, on its face, the confidentiality provided under Section 29-10-4 does not apply to a person who has been arrested but not formally charged by indictment, filing of information or otherwise.

Finally, even as to persons who have been charged, the only arrest record information protected under Section 29-10-4 is "information that reveals confidential sources, methods, information or individuals accused but not charged with a crime." This does not protect the identity of the person charged. The reference to "individuals accused but not charged with a crime" clearly is intended to distinguish such persons from the person charged, and to protect the identity of third parties about whom information may be recorded in investigatory or other records made in connection with the person charged with a crime.

This result is not affected by the exception to the Inspection of Public Records Act for "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime." **See** NMSA 1978, § 14-2-1(D) (Cum. Supp. 1993). Significantly, that exception and the amendments to the Arrest Record Information Act use identical language and were part of the same enactment. **See** 1993 N.M. laws, ch. 260 §§ 1, 4. Thus, it is likely that the legislature intended both provisions to except the same information from disclosure. **See Roth v. Thompson**, 113 N.M. 331, 334, 825 P.2d 1241 (1992) (all provisions of a statute, together with other statutes in pari materia (on the same subject), must be read together to ascertain legislative intent); **State v. Clark**, 80 N.M. 340, 342, 455 P.2d 844 (1969) (statutes passed at the same legislative session and pertaining to the same subject matter are to be construed as in pari materia). As explained in the Attorney General's Inspection of Public Records Act Compliance Guide, the law enforcement records exception was "intended to protect criminal investigative materials, the disclosure of which could seriously interfere with the effectiveness of an investigation," including the danger of alerting "potential defendants to destroy evidence, coordinate stories or flee the jurisdiction" and of discouraging "potential witnesses from cooperating." Compliance Guide, p. 6 (Nov. 1993).

Similarly, because the law enforcement record exception to the Inspection of Public Records Act and the amendment to Section 29-10-4 of the Arrest Records Information

Act were part of the same enactment, the law enforcement records exception should not be read more broadly than Section 29-10-4 to protect from public inspection information identifying an individual who has been arrested. Again, as discussed above, the legislature's probable intent in enacting both provisions was to protect information about third parties "accused but not charged with a crime" gathered in the course of a criminal investigation. That this was the legislature's purpose also is suggested by the other information listed in both provisions: " **confidential** sources, methods information. . . ." (Emphasis added). As indicated in the Arrest Records Information Act, the legislature generally does not consider information identifying an arrested person confidential. Therefore, it would not make sense to apply the law enforcement records exception broadly to include such information, particularly in light of the general legislative policy in favor of inspection enunciated in the Inspection of Public Records Act. **See** NMSA 1978, § 14-2-5 (declaring it "to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employee").

To summarize, neither the Arrest Record Information Act nor the Inspection of Public Records Act authorize a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. Section 29-10-4 of the Arrest Record Information Act protects the confidentiality of information concerning the identity of a person who has been accused but not charged with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under the Inspection of Public Records Act. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in Section 29-10-7, including a police blotter or other original record of entry maintained by a law enforcement agency.

ATTORNEY GENERAL

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GENERAL FOOTNOTES

[n1](#) A previous opinion issued by this office interpreting the Arrest Records Information Act described information customarily kept in a police blotter or original record of entry as "the name, physical description, place and date of birth, address, and occupation of the individual arrested; the time and place of arrest; the offense for which the individual was arrested or detained; and the name of the arresting officer." AG Op. No. 75-37 (1975), superseded on other grounds by AG Op. No. 78-9 (1978) (discussing 1977 amendments to the Arrest Records Information Act).