2010-041

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

February 1, 2010

Honorable J. Christopher Murphy
Director, Department of Public Safety
Post Office Box 1511
Montgomery, Alabama 36102-1511

Sex Offenders — Public Records — Public Safety, Department of — State Records Commission

The Department of Public Safety ("Department") is not required to keep a hard copy of the sex offender information it is required to record by law once the information has been scanned or accurately entered into its electronic database. The Department must ensure that the digital records it is required to keep are protected from loss or destruction. The Department should contact the Alabama Department of Archives and History for guidance on managing and maintaining its electronic records system.

Dear Colonel Murphy:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

May the Department of Public Safety destroy hard copies of sex offender information once it has been scanned into the Department's computer system? Is it necessary that the Department retain a hard copy of all sex offender information?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Alabama Department of Public Safety maintains sex offender records in both digital and hard copy formats. You stated that the Department scans each file into its computer system and keeps the physical documents. You write to inquire whether the Department must keep the hard copies of the files once they have been scanned and otherwise entered into the system.

Under sections 15-20-1, *et seq.*, and 15-20-20, *et seq.*, of the Code of Alabama, the Department is required to keep certain records pertaining to arrest, conviction, and registration information of criminal sex offenders. Section 15-20-5 authorizes the Department to adopt a system for recording the arrest and conviction information supplied to it by law enforcement officers and courts:

> The State Department of Public Safety ***shall adopt and maintain a system for registering or recording and indexing*** the information supplied by law enforcement officers and courts pursuant to Sections 15-20-2 and 15-20-3, which, in the opinion of the Director of Public Safety, will render this information useful in the apprehension and conviction of persons guilty of sex crimes and in the prevention or curtailing of such crimes.

ALA. CODE § 15-20-5(a) (1995) (emphasis added). Similarly, section 15-20-20, *et seq.,* the Alabama Community Notification Act ("ACNA"), requires the Department to record certain post-conviction sex offender registration information.

Some of the documents entered into the Department's electronic database may be needed for evidentiary purposes in trials or court proceedings in this state. For these purposes, the Alabama Rules of Evidence would not require the Department to retain the original copy of the document that came into its possession, provided that the document has been accurately recorded or stored in the Department's database. Alabama Rules of Evidence 901 states, in pertinent part, as follows:

> [T]he following are examples of authentication or identification conforming with the requirements of this rule:
>
> . . .

> (7) PUBLIC RECORDS OR REPORTS. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, ***or data compilation, in any form***, is from the public office where items of this nature are kept.

ALA. R. EVID. 901 (2003); *see also,* ALA. CODE § 8-1A-13(a) (2002) ("[i]n any proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form").

The Uniform Electronic Transactions Act ("UETA") is codified at section 8-1A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 8-1A-1 to 8-1A-20 (2002). Section 8-1A-18 of UETA allows governmental agencies with rule-making authority to create and process electronic records. Specifically, section 8-1A-18 states as follows:

> (a) Except as otherwise provided in subsection (f) of Section 8-1A-12, the Alabama Supreme Court and any other court or judicial official or entity with rule-making authority and ***each governmental agency of this state with rulemaking authority reviewable under Section 41-22-23 may determine by rule whether, and the extent to which, it will send and accept electronic records*** and electronic signatures to and from other persons ***and otherwise create, generate, communicate, store, process, use, and rely upon electronic records*** and electronic signatures.
>
> (b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify each of the following:
>
> > (1) The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes.
> >
> > (2) If electronic records must be signed by electronic means, the type of electronic signature

required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process.

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in subsection (f) of Section 8-1A-12, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

ALA. CODE § 8-1A-18 (2002) (emphasis added).

Section 8-1A-12 states, in pertinent part, as follows:

(a) ***If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record*** which meets the following requirements:

(1) Accurately reflects the information set forth in the record as it was first generated in final form as an electronic record or otherwise.

(2) Remains accessible for later reference.

. . .

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after January 1,

> 2002, specifically prohibits the use of an electronic record for the specified purpose.
>
> (g) This section does not preclude the State Records Commission, Local Government Records Commission, or other governmental agency of this state from specifying additional requirements for the retention by the agency of a record subject to the agency's jurisdiction. The State Records Commission and the Local Government Records Commission may promulgate records retention standards for state and local government agencies to follow in compliance with this chapter.

ALA. CODE § 8-1A-12 (2002 (emphasis added); *see also,* opinion to Honorable Adrian T. Johns, Baldwin County Judge of Probate, dated August 29, 2002, A.G. No. 2002-327 ("the official record for the county probate office may be maintained through a digital imaging system in accordance with Title 8 Chapter 1A of the Code of Alabama and all other applicable state and local standards").

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997).

The Legislature granted the Director of the Department of Public Safety the authority to "promulgate any rules as are necessary to implement and enforce the provisions of [the ACNA]." ALA. CODE § 15-20-38(c) (Supp. 2009). As a state agency with rule-making authority, the Department of Public Safety is not required to keep a hard copy of the sex offender information it is required to record by law once it has been scanned or entered into its electronic database. The Department must ensure that the digital records it is required to keep by law are protected from loss or destruction. *See* ALA. CODE § 36-12-2 (2001). The Department should contact the Alabama Department of Archives and History for guidance on managing and maintaining its electronic records system. ALA. CODE § 41-13-21 (2000).

CONCLUSION

The Department of Public Safety is not required to keep a hard copy of the sex offender information it is required to record by law once the information

has been scanned or accurately entered into its electronic database. The Department must ensure that the digital records it is required to keep are protected from loss or destruction. The Department should contact the Alabama Department of Archives and History for guidance on managing and maintaining its electronic records system.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Pete Smyczek of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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