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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

October 28, 2011

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Cleophus Thomas, Jr.
Attorney, City of Anniston
Post Office Box 2363
Anniston, Alabama 36202

Public Records – Uniform Incident/Offense
Report – Courts - Municipalities –
Investigative Reports – Calhoun County

The city council, city manager, or a person authorized by the council or manager, including an authorized individual council member, may only obtain the front side of an Alabama Uniform Incident/Offense Report, even after the case is closed, under section 45-8A-23.262 of the Code of Alabama.

The city manager may obtain a full report from the city's police department, if necessary, as part of the normal supervisory functions of the manager's office. The manager should not make the back side of the report available for inspection.

Dear Mr. Thomas:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Anniston.

QUESTIONS

(1) May a member of the city council who is establishing a review policy obtain the back side of an Alabama Uniform/Incident Offense Report, even if there is a pending criminal investigation?

(2) May the city council, city manager, or authorized person obtain a full report, under section

45-8A-23.262 of the Code of Alabama, after an investigation has been closed when there has been impropriety in the taking of the report or in the conduct of the investigation?

(3) May a council member obtain a full report without authorization from the council?

(4) May the city manager obtain a full report in his or her capacity as the chief administrative officer to whom the police chief reports?

FACTS AND ANALYSIS

Your questions concern the extent to which city officials may inquire into the conduct of municipal departments. Your request states that the City of Anniston operates under the City Manager Act of 1953, codified at section 45-8A-23, *et seq.*, of the Code of Alabama. ALA. CODE §§ 45-8A-23 to 45-8A-23.310 (2005). Section 45-8A-23.262 is the controlling statute for when certain officials may make such inquiries. Therefore, your questions will be considered together under this statute.

Similar to section 11-43-163 of the Code applicable to municipalities with a mayor-council form of government [ALA. CODE § 11-43-163 (2008)], section 45-8A-23.262 provides generally, as follows, for the investigatory authority of the city council, city manager, or person authorized by the council or manager:

The council, the city manager, or any person or committee authorized by either of them, shall have power to inquire into the conduct of any office, department, board, or agency or officer of the city and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Failure to obey such subpoena or to produce books, papers, or other evidence as ordered under the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine not to exceed one hundred dollars (\$100) or by imprisonment not to exceed six months, or both.

ALA. CODE § 45-8A-23.262 (2005) (emphasis added). This section provides for the council as a whole, the manager, or a person on their behalf, which can include an individual council member, but not a council member independently, to conduct an investigation.

Section 12-21-3.1 of the Code, however, specifically addresses the disclosure of law enforcement investigative reports like the Alabama Uniform/Incident Offense Report. It provides that these reports are privileged information, stating as follows:

(a) Neither law enforcement investigative reports nor the testimony of a law enforcement officer may be subject to a civil or administrative subpoena

.....

(b) Law enforcement investigative reports and related investigative material are not public records. Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure.

ALA. CODE § 12-21-3.1 (2006).

Specific provisions relating to specific subjects control general provisions relating to general subjects. *Ex parte Jones Mfg. Co. Inc.*, 589 So. 2d 208, 211 (Ala. 1991); *Murphy v. City of Mobile*, 504 So. 2d 243, 244 (Ala. 1987); *Herring v. Griffin*, 211 Ala. 225, 226, 100 So. 202, 203 (1924). Accordingly, section 45-8A-23.262 is limited by section 12-21-3.1. Nonetheless, this Office has clarified that section 12-21-3.1 does not alter the well-settled interpretation that the front side of the Incident/Offense Report should be available for public inspection. Opinion to Honorable Tommy Ed Roberts, Alabama State Senator, dated October 7, 1999, A.G. No. 2000-004; *see also*, opinions to Honorable S. Wayne Fuller, Attorney, City of Cullman, dated August 30, 2000, A.G. No. 2000-225; Honorable D. T. Marshall, Montgomery County Sheriff, dated August 8, 2000, A.G. No. 2000-203; Honorable Paige M. Carpenter, Attorney, City of Northport, dated July 19, 2000, A.G. No. 2000-197.

Reflecting the opinions of this Office predating its enactment, section 12-21-3.1 does not distinguish between reports in cases that are closed from those in open cases. This Office has explained, as follows, that the confidential portion of the report remains confidential both during and after the investigation:

Even 'closed' cases could be re-opened at any time, and, in any event, the investigations of earlier cases often throw light on new cases. Similarly, 'minor' cases often throw light on major crimes. See, for example, *Stone v. Powell*, 44 L.W. 5313, 5314 (1976), wherein vagrancy arrest under a Nevada Town

ordinance solves an earlier murder in California. Thus, in order to protect ongoing or future investigations, a police department is well justified in keeping its investigative reports confidential.

Opinion to Honorable M. E. "Mac" Holcomb, Sheriff, Marshall County, dated November 27, 1996, A.G. No. 97-00043, at 3, *quoting* opinion to Honorable Frank Roberts, Mayor of Phenix City, dated August 9, 1976.

This approach is consistent with this Office's treatment of complaint files of state licensing boards. The leading opinion was issued to Honorable Tish P. Spencer, Executive Director, Home Builders Licensure Board, dated July 31, 1997, A.G. No. 97-00244. That opinion concluded that "information contained in the Board's complaint files should be kept confidential, except to the extent made public through formal disciplinary action proceedings." *Id.* at 7. Relying on the *Holcomb* and *Roberts* opinions, the *Spencer* opinion stated that open and closed complaint files, including those in which no probable cause is found to proceed with disciplinary action, should be kept confidential to protect ongoing or future investigations.

Regarding the independent authority of the city manager to obtain a full report, this Office has stated that a town council may require its municipally sanctioned volunteer fire department to provide the town with unredacted fire reports because the council supervises the department. Opinion to Honorable Eugene Byrum, Mayor, Town of Powell, dated July 3, 2007, A.G. No. 2007-111. The City Manager Act, however, which is applicable to the City of Anniston, specifically grants the city manager supervisory control over employees, departments, and department directors. ALA. CODE § 45-8A-23.091(3) (2005); ALA. CODE § 45-8A-23.094 (2005). Therefore, the manager may obtain a full report from the city's police department, if necessary, as part of the normal supervisory functions of the manager's office. The manager should not make the back side of the report available for inspection.

CONCLUSION

The city council, city manager, or a person authorized by the council or manager, including an authorized individual council member, may only obtain the front side of an Alabama Uniform Incident/Offense Report, even after the case is closed, under section 45-8A-23.262 of the Code of Alabama.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/GWB

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