



2015-057

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

July 30, 2015

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

Honorable Al Kelley
Mayor, City of Millbrook
Post Office Box 630
Millbrook, Alabama 36054

Arrest Reports – Public Records –
Municipalities – Elmore County

The Alabama Uniform Arrest Report is subject to disclosure under the Open Records Law, except when specific records or portions thereof can be demonstrated by the Millbrook Police Department to fall within a recognized exception.

The home address, telephone number, social security number, driver's license number, occupation, employer, and business address and telephone number of the arrestee on the front side of the report may be withheld from public inspection.

The full address of the location of arrest, if the same as the home address, on the front side of the report may be withheld. The block number or street name is a public record.

The "SID" and "FBI" numbers on the front side of the report should not be released.

The "Juvenile" section and the name of a juvenile arrestee on the front side of the report should be withheld.

No portion of the back side of the report is a public record.

If the release of information from any other sections of the form would compromise a

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pending criminal investigation, that information may be withheld.

Dear Mayor Kelley:

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

QUESTION

Is the Alabama Uniform Arrest Report a public record?

FACTS AND ANALYSIS

Section 36-12-40 of the Code of Alabama is the Open Records Law, and it provides that “[e]very citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (2013).

The leading Alabama open records case is *Stone v. Consol. Publ'g Co.*, 404 So. 2d 678 (Ala. 1981). In *Stone*, the Supreme Court of Alabama considered privacy interests under the Open Records Law, choosing to “balance the interest of the citizens in knowing what their public offices are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference.” *Id.* at 681. The Court gave the following exceptions to the general rule of disclosure: (1) recorded information received by a public officer in confidence; (2) sensitive personnel records; (3) pending criminal investigations; and (4) records the disclosure of which would be detrimental to the best interests of the public. *Id.* at 681.

Subsection (b) of section 12-21-3.1 of the Code additionally provides the following exemption: “**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(b) (2012) (emphasis added).

This Office has explained the origin of police reports in this state as follows:

Section 41-9-620 provides that “[t]he [Alabama Justice Information Commission (“Commission”)] shall provide for a uniform crime reporting system for the periodic collection and analysis of crimes reported to any and all criminal justice agencies within the state.” ALA. CODE §41-9-620 (1991)[; ALA. CODE §41-27-5(c) (2013)]. The Alabama Uniform Incident/Offense Report (“the report”) is a two-sided document that was designed by the Criminal Justice Information Center [a predecessor agency of the Alabama State Law Enforcement Agency] pursuant to this directive from the Alabama Legislature. It is designed to collect basic information relative to investigations of crimes in Alabama in “fields” where specific information regarding an incident or offense is entered.

Opinion to Tommy Ed Roberts, Alabama State Senator, dated October 7, 1999, A.G. No. 2000-004 at 2 (bracketed material added).

The Alabama Uniform Arrest Report (“Arrest Report”) is likewise promulgated by the Commission for the similar purpose of collecting certain criminal information. Opinion to Honorable M. E. “Mac” Holcomb, Marshall County Sheriff, dated November 27, 1996, A.G. No. 97-00043. A copy of the Arrest Report is included with your request. It also is a two-sided document. The information fields on the front side of the form are organized into sections by subject matter. The reverse side consists almost entirely of a narrative of the events.

The *Roberts* opinion addressed application of section 12-21-3.1(b) to the Incident/Offense Report. That opinion “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.” Opinion to Honorable Cleophus Thomas, Jr., Attorney, City of Anniston, dated October 28, 2011, A.G. No. 2012-009 at 3.

Although this Office has not previously considered the effect of section 12-21-3.1(b) on the Arrest Report, a review of the line of opinions leading to the *Roberts* opinion, which discussed police reports generally, is helpful. The earliest of those opinions encouraged withholding such reports completely from public inspection. Opinions to Honorable Richard F. Calhoun, Troy City

Attorney, dated April 2, 1990, A.G. No. 90-00204; Honorable David Stout, Mayor of Fort Payne, dated February 23, 1989, A.G. No. 89-00193; Honorable Frank Roberts, Mayor of Phenix City, dated August 9, 1976. Eventually, they evolved to the determination that portions of the reports, specifically the Incident/Offense Report, could be withheld. Opinion to Honorable M. E. "Mac" Holcomb, Marshall County Sheriff, dated November 27, 1996, A.G. No. 97-00043. Finally, the *Roberts* opinion identified the portions that were public on that particular report.

In matters of statutory interpretation, it is presumed that the Legislature, in enacting new legislation, knows the existing law. *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71 (Ala. 2003), quoting *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 2d 293, 297 (Ala. 1998). Had the Legislature intended to make all of the information contained in the Arrest Report confidential, it could have done so by expressly referencing the report by name in section 12-21-3.1(b). Consistent with the *Roberts* opinion, the statute did not change the longstanding interpretation that portions of a police report are available for public inspection. *See also*, opinion to Honorable Nancy Worley, Secretary of State, dated March 21, 2006, A.G. No. 2006-071 (Open Meetings Act did not change the interpretation under the Sunshine Law that physical presence at a meeting is required for there to be a quorum).

The name, social security number, address, and telephone number of the arrestee are listed in the "Identification" section on the front side of the Arrest Report. This Office has consistently stated that, although names should be available for public inspection, home addresses, telephone numbers, and social security numbers are more personal than public and may not be subject to disclosure. *See* opinions to the following:

- Honorable E. Shane Black, Attorney, City of Athens, dated March 13, 2012, A.G. No. 2012-045;
- Honorable William A. Meehan, President and Secretary, Board of Trustees, Jacksonville State University, dated August 30, 2011, A.G. No. 2011-094;
- Honorable Jay M. Ross, Daphne City Attorney, dated August 17, 2006, A.G. No. 2006-134;
- Honorable Vivian Davis Figures, Member, Alabama State Senate, dated March 17, 2006, A.G. No. 2006-068;
- Honorable Charles West, Board Chairman, Cumberland Mountain Water Authority, dated July 30, 2003, A.G. No. 2003-204; and

- Ms. Constance S. Aune, Mobile County Board of Education, dated October 4, 1995, A.G. No. 96-00003.

The “Identification” section also lists the arrestee’s “SID” and “FBI” numbers. The *Law Enforcement Officers’ Handbook* states that those numbers are assigned to a fingerprint card when it is received by the Alabama State Law Enforcement Agency (“ALEA”) and the Federal Bureau of Investigation for tracking purposes by the agencies. Appendix A, *Criminal Laws of Alabama* (2014) at A-48. This Office understands that officers completing the Arrest Report obtain the numbers from the Criminal Justice Information System (“CJIS”) operated by ALEA for the Alabama Justice Information Commission. ALA. CODE § 41-9-591 (2013); ALA. CODE §41-27-5(c) (2013).

CJIS information is confidential information that is only available to criminal justice agencies. ALA. CODE § 41-9-621(6) (2013); ALA. ADMIN. CODE r. 265-X-2-.02 (2008); opinion to Honorable Larry Wright, Director, Alabama Criminal Justice Information Center, dated November 1, 1995, A.G. No. 96-00026. It is a crime to disseminate that information in an unauthorized manner. ALA. CODE § 41-9-601 (2013); ALA. CODE § 41-9-602 (2013). The earliest opinion of this Office considering the CJIS statutes emphatically concluded that “the Criminal Justice Information System records are not ‘public records’ subject to public disclosure.” Opinion to Honorable R. W. Blaylock, Director, Alabama Criminal Justice Information System, dated January 14, 1976 at 3. Accordingly, although an officer may pull these numbers from CJIS for the Arrest Report, sharing them outside the law enforcement community is statutorily prohibited.

The “Identification” section also lists the arrestee’s driver’s license number. Congress has long afforded confidential treatment to certain types of driver’s license information. This Office has explained that, “[i]n 1996, Congress enacted the Driver’s Privacy Protection Act (“DPPA”), codified at 18 U.S.C. §2721, *et seq.* Essentially, the DPPA placed certain restrictions and prohibitions on the release or use of personal information contained in state motor vehicle records.” Opinion to Honorable Dwight Carlisle, Commissioner, Department of Revenue, dated April 7, 2003, A.G. No. 2003-122 at 2. “Personal information is defined under 18 U.S.C. § 2725(3) as any information that identifies an individual, such as the individual’s . . . driver identification number. . . .” Opinion to Honorable J. Christopher Murphy, Director, Department of Public Safety, dated July 25, 2007, A.G. No. 2007-117 at 2.

Since passage of the DPPA, concern over the use of personal information has only intensified. In fact, this Office, in addressing disclosure of such information on statements of economic interests required to be filed by public officials and employees under section 36-25-14 of the Code, recently noted “the problem presented by identity theft and the Legislature’s attempts to address the

issue.” Opinion to Honorable Kim T. Thomas, Commissioner, Alabama Department of Corrections, dated December 6, 2012, A.G. No. 2013-013 at 5. That opinion examined section 41-13-7 of the Code, enacted in 2009, which exempts personal information of state merit system employees from the Open Records Law. ALA. CODE § 41-13-7 (2013). The definition of the information subject to the exemption includes driver’s license number, in addition to home address, telephone number, and social security number. ALA. CODE § 41-13-7(a)(2)c (2013). In the face of this growing view, it is the opinion of the Attorney General that a driver’s license number is more personal than public.

The “Identification” section also lists the arrestee’s occupation, employer, and business address and telephone number. This Office has considered business-related information in applications for pistol permits and for utility service as a customer to be more personal than public. Opinions to Honorable Dan Jones, Montgomery County Sheriff, dated October 30, 1998, A.G. No. 99-00032; Honorable Chris Goulart, Chairman, Daleville Water Works and Sewer Board, dated October 27, 1997, A.G. No. 98-00019. In determining that such information is more personal than public, those opinions recognized that the employment relationship was not related to the government activity generating the record. Similarly, as employment information is not normally related to the circumstances of arrest, it is not subject to disclosure.

The location of arrest is listed in the “Arrest” section on the front side of the Arrest Report. The same type of information is provided for as place of occurrence in the “Event” section of the Incident/Offense Report. Although included on the front side of the Incident/Offense Report that is considered public, this information is still only partially subject to release. The instructions for that report in the *Law Enforcement Officers’ Handbook* state that, “[i]f the place of occurrence is the victim’s residence, the reporting officer shall list the approximate location where the incident or offense occurred. . . . Examples of an ‘approximate location’ include block number or the street name if the street does not have multiple blocks.” Appendix A, *Criminal Laws of Alabama* (2014) at A-19. This reading strikes the appropriate balance between the personal nature of a home address and the public’s interest in knowing where crime occurs. Thus, the full address of the arrest location, if the same as the home address of the arrestee, should not be disclosed. The block number or street name is a public record.

There is a section on the front side of the Arrest Report to be completed if the arrestee is a juvenile. This Office has stated that there is “an exception to the public records law for juveniles.” *Ross* at 5. Our opinions have advised against disclosure of juvenile information in Incident/Offense Reports and fire reports based on the confidential treatment afforded juveniles under Alabama law. *Ross*; opinion to Honorable S. Wayne Fuller, Attorney, City of Cullman, dated August 30, 2000, A.G. No. 2000-225. Accordingly, the “Juvenile” section

and the name of a juvenile arrestee listed in the "Identification" section should not be disclosed.

Regarding the narrative on the back of the Arrest Report, the same narrative information is provided for on the back side of the Incident/Offense Report. The *Roberts* opinion did not include the narrative within the information that has historically been viewed as public. That opinion distinguished the information on the front that was subject to disclosure from that on the back, characterizing the latter as part of the investigatory process. Therefore, the *Roberts* opinion found that the protection from disclosure of section 12-21-3.1(b) applied to the back. The statute applies equally to the back of the Arrest Report.

Lastly, you are reminded that, even regarding information that would ordinarily be made public, "[r]ecords concerning pending criminal investigations may not be subject to disclosure when the disclosure of the information will compromise the investigation." *Ross* at 5, *citing Roberts*. Thus, if the release of any other sections of the form would compromise a pending criminal investigation, that information should not be disclosed.

CONCLUSION

The Alabama Uniform Arrest Report is subject to disclosure under the Open Records Law, except when specific records or portions thereof can be demonstrated by the Millbrook Police Department to fall within a recognized exception.

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I hope this opinion answers your question. 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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