



2007-052

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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February 26, 2007

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Honorable Huey Hoss Mack
Baldwin County Sheriff
310 Hand Avenue
Bay Minette, Alabama 36507

Sheriffs – Public Records – Records
Retention – Law Enforcement – Internet

Under section 41-9-625 of the Code of Alabama, the Sheriff of Baldwin County is required to expunge, from the Sheriff's Office, the Baldwin County Corrections Center, or the Corrections Center's website, identification information, including the booking photograph, on a defendant who is released without charge or is cleared of an offense.

Dear Sheriff Mack:

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

QUESTION

Is the Sheriff of Baldwin County required to remove the booking photograph and information on an individual from the Baldwin County Corrections Center public website at the individual's request, and what would be the proper procedure for the individual to have this accomplished?

FACTS AND ANALYSIS

Your request states as follows:

Recently, the Baldwin County Sheriff's Office developed a website for our Corrections Center (www.bcsonline.co.baldwin.al.us). The primary purpose of the site was to allow other law enforcement agencies access to our jail records and current inmates. The site was developed with assistance from the Baldwin County District Attorney's Office. The general public, media, and other interested parties can also access a limited version of the site. The public access site does not contain all of the information available to law enforcement. Law enforcement agencies are issued a password and user ID to access the secure site. We occasionally receive calls from individuals requesting that their photographs and booking information be removed from our site because they were found not guilty, their case was dismissed, or for other reasons the case was disposed of with no findings of guilt. According to the Alabama Department of Archives and History, these booking photos and related information are to be retained for fifty years or until the death of the individual.

Alabama law broadly defines "public records" in section 41-13-1 of the Code of Alabama as follows:

As used in this article, the term "public records" shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer.

ALA. CODE § 41-13-1 (2000). Additionally, section 36-12-40 of the Code of Alabama 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 (Supp. 2006).

The sheriff must record identifying information on all prisoners who are sent to jail. Section 36-22-8 of the Code of Alabama provides as follows:

The sheriff must keep, in his office and subject to the inspection of the public during office hours, a well-bound book, to be procured at the expense of the county, in which he must enter a description of each prisoner received into the county jail, showing the name, age, sex, color and any other distinguishing marks, together with the charge for which such prisoner is held, the order and date of commitment and the order and date of release.

ALA. CODE § 36-22-8 (2001) (emphasis added).

This Office has stated that a mugshot is a public record. Opinion to Honorable Terry L. Davis, Boaz Chief of Police, dated April 1, 2004, A.G. No. 2004-108. This Office has also stated that arrest information, including the jailer's logbook, is a public record. Opinion to Honorable Lee Clyde Traylor, District Judge, DeKalb County District Court, dated December 17, 2002, A.G. No. 2003-048.

This Office has recognized that there is no legal prohibition against a public agency's maintaining its records on the agency website. Opinion to Honorable H. E. Monroe, Jr., Revenue Commissioner, dated June 8, 1998, A.G. No. 98-00158. The *Monroe* opinion concluded that, although not required, county tax assessors could put appraisal, mapping, and assessment data on the Internet for public access. The opinion did not address the removal of public records from a website.

This Office, however, has considered the general question of whether booking photographs and information of the sheriff can be expunged. Opinion to Honorable Beasor B. Walker, Sheriff, Tuscaloosa County, dated December 12, 1985, A.G. No. 86-00084. The *Walker* opinion rejected that proposition, explaining as follows:

[T]he only criminal records that a court may order expunged or destroyed are juvenile offender records. Code of Alabama 1975, Section 12-15-103. This must be done pursuant to Section 12-15-103. The contents of the record book which you are required to keep pursuant to Section 36-22-8 thus cannot be expunged

except as to juvenile records upon a court order issued pursuant to Section 12-15-103.

Id. at 2.

A similar conclusion was reached regarding a municipal court's authority to expunge criminal records. It was determined that "[t]here is nothing in the Constitution of Alabama 1901 or the Alabama code granting municipal courts the power to expunge records." Opinion to Eugene Shannon, President of Town Council, Town of Ardmore, dated August 4, 1988, A.G. No. 88-00410 at 2.

Recently, the Supreme Court of Alabama addressed a municipal court's authority to expunge criminal records under section 41-9-625 of the statutes for the Alabama Criminal Justice Information Center ("ACJIC"). ALA. CODE § 41-9-625 (2000). This section provides as follows:

All persons in this state in charge of law enforcement and correction agencies shall obtain or cause to be obtained the fingerprints according to the fingerprint system of identification established by the commission, full face and profile photographs, if photo equipment is available, and other identifying data of each person arrested for an offense of a type designated in Section 41-9-622, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested for offenses other than those designated in this article may be taken at the discretion of the agency concerned.

If any person arrested or taken into custody is subsequently released without charge or cleared of the offense through criminal justice proceedings, such disposition shall be reported by all state, county and municipal criminal justice agencies to ACJIC within 30 days of such action, and all such information shall be eliminated and removed.

Id. (emphasis added).

In declining to answer whether a municipal court is subject to the statute, the Supreme Court addressed application of the statute to "criminal justice agencies" generally. The Court relied on the language emphasized above, holding that a criminal justice agency may not expunge an entire criminal record, but is required to expunge identification information on a defendant who is released without charge or cleared of the offense. *Mobile Press Register, Inc. v. Lackey*, 938 So. 2d 398 (2006). The Court further elaborated on the type of identification information that is subject to expungement as follows:

We conclude that "such information" refers to "fingerprints," "full face and profile photographs," and "other identifying data. . . ." [W]e conclude that "other identifying data" . . . is information that can be used to track down and identify persons in the manner that photographs and fingerprints are used. Examples include an individual's blood type, height, weight, hair color, eye color, scars, physical deformities, etc.

Id. at 402.

The sheriff is a criminal justice agency under the ACJIC statutes. Opinion to Honorable Jim Woodward, Sheriff of Jefferson County, dated November 5, 2001, A.G. No. 2002-054 (overruled on other grounds); *c.f.*, Opinion to Honorable Martin A. Ramsay, Executive Director, Alabama Crime Victims Compensation Commission, dated April 13, 2006, A.G. No. 2006-084 at 2 (stating that the Alabama Crime Victims Compensation Commission ("ACVCC") is not a criminal justice agency because "the principal function of the ACVCC is the assistance of crime victims, not the identification, apprehension, prosecution, adjudication, or rehabilitation of their perpetrators").

The *Walker* opinion is overruled to the extent that it conflicts with this opinion.

CONCLUSION

Under section 41-9-625 of the Code of Alabama, the Sheriff of Baldwin County is required to expunge, from the Sheriff's Office, the Baldwin County Corrections Center, or the Corrections Center's website, identification information, including the booking photograph, on a defendant who is released without charge or is cleared of an offense.

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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,

TROY KING
Attorney General
By:

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

BRENDA F. SMITH
Chief, Opinions Division

TK/GWB/CG
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