OFFICE OF THE CITY ATTORNEY

OPINION NO. 93-01

TO: Michael L. Strope, Police Chief

FROM: Stephen M. Kemp, City Attorney

DATE: February 5, 1993

SUBJECT: Public Release of Police Reports

QUESTION:

What are the standards for public release of information contained in police reports and in particular:

1. Adults

a. suspects
b. arrested individuals
c. victims
d. Witnesses
e. Investigative leads

2. Juveniles
a. suspects
b. arrested individuals
c. victims
d. Witnesses
e. Investigative leads

3. Accident reports

4. Information contained in reports

5. Tests

6 Citations and booking records

7. Subpoenas

OPINION:

There are three standards to be considered in the release of police reports. The first is the Arizona Public Records Law, A.R.S. §39-101, et.seq. The second is the Arizona Rules of Professional Conduct, Rule 3.6. The third is Rule 39 of the Arizona Rules of Criminal Procedure, which implements the "Victim's Bill of Rights." Copies of both are attached as appendices A and B.

The Arizona Rules of Professional Conduct apply to lawyers, in this case, the City Attorney and their associates, i.e., law enforcement.[1] Under Rule 3.6, statements outside of the court should not be made that pertain to:

1. Identity of witnesses, their character, credibility, reputation, criminal record or expected testimony.

2. Speculate on whether the Defendant will accept a plea, or the existence of a confession or admission. Commenting on the defendant's failure to make a statement is not permitted.

3. Performance of or results of any test or the failure of an individual to submit such test.

4. Any opinion on guilt or innocence of a defendant.

5. The fact that the defendant has been charged with a crime, unless it is included that the charge is an accusation and that the defendant is innocent until proven guilty.

Therefore, based on this rule, the following information should not be made public during pending criminal cases of both juveniles and adults:

1. Identity of witnesses and their statements.
2. Defendant's statement or confession.
3. The performance of result of tests.
4. Opinions by the police or prosecutor on the defendant's guilt or innocence.

The following information may be made public during pending criminal cases of both juveniles and adults:

1. Date, time and occurrence of a crime.

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[1]Rule 3.8 Rules of Professional Conduct governs responsibilities of prosecutors and associated individuals.

2. Identity of Defendant
3. The offense Defendant was charged with, provided that it is indicated that he is innocent until proven guilty.

Under Rule 39 of the Arizona Rules of Criminal Procedure, crime victims may have their home address, telephone number, address and telephone number of employer and name of victim's employer withheld from discovery by the defendant or his counsel, unless good cause is shown.

Therefore, in criminal cases, the names, dates of birth and social security numbers may be released. In order to preserve the victim's right to have their address and telephone number kept confidential, only the street or major intersection near the victim's residence should be released.

While the courts have not addressed whether Rule 39 applies to juveniles, the intent behind the constitutional amendment creating the Victim's Bill of Rights is to provide rights to all crime victims. Therefore,it would be my suggestion that the same procedure be used for both adults and juveniles.

The relationship between the Arizona Public Records Act and the Rules of Professional Conduct has recently been discussed in Cox Arizona Publications v. Collins, 169 Ariz. 189, 818 P2d 174 (App. 1991) Rev'w granted. In Cox, a newspaper demanded that the Maricopa County Attorney release the police reports pertaining to the investigation of several members of the Phoenix Suns professional basketball team for alleged drug law violations. The county attorney refused based on Rules 3.6 and 3.8 of the Arizona Rules of Professional Conduct.

The Court of Appeals held that current ongoing investigations are exempt from public disclosure due to the state's interest in due process, confidentiality, privacy and the best interests of the state. Therefore, in regard to questions 1 and 2 in your request, current on-going investigative reports should not be released to the public except to the extent indicated above.

In regard, to question 3, the state's interest is not as significant in a criminal traffic or DUI matter as it would be in a felony matter. Additionally, these matters are generally closed in a short period of time. Under the Court of Appeals decision, once the report is completed and closed it may be released. Obviously, if the record is being solicited for a commercial purpose, the requirements of A.R.S. §39-123.01 must be complied with.

As to adverse comments, regarding the character of an individual in a report, I would suggest that officers preparing such reports are to record their observations of the facts, consequently, I would presume that the reports do not contain any defamatory, untrue statements or personal opinions. As such, they should only be deleted if they meet the guidelines set forth above in regard to questions 1 and 2.

In regard to tests and booking records, I would refer you to the opinions on questions 1 and 2 set forth above. Again, the central issue is indicating that the booking record does not indicate guilt or innocence.

In the event you are served with a subpoena for any matter, a copy of the item requested and the subpoena should be immediately provided to the Office of the City Attorney for our review and action. At that point we will work with you to ensure that the case is not jeopardized by the disclosure.

If you should have any questions, please do not hesitate to contact me.

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