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December 14, 1979

INTERAGENCY
Honorable Earl V. Wilcox
State Representative
House Wing, Capitol Bldg.
Phoenix, Arizona 85007

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: I79- 296 (R79-219)

Dear Representative Wilcox:

In your letter of July 27, 1979, you requested this office's opinion concerning your belief that the Phoenix Police Department keeps records on suspected gang members and classifies the gangs as violent or peaceful. You specifically asked whether the Department may withhold this information from a juvenile or his parents, if they request this information.

A similar question was answered in the affirmative in Department of Law Opinion 76-43, a copy of which is enclosed for your information. That opinion interprets Ariz. Rev. Stat. Ann. § 39-121, which provides as follows:

Public records and other matters in the office of any officer at all times during office hours shall be open to inspection by any person.

As the opinion indicates, although this statute gives the public the right to access to certain information, this is a qualified right, and information may be withheld by an agency, if disclosure is against the best interests of the State. See Mathews v. Pyle, 75 Ariz. 76, 80, 251 P.2d 893, 896 (1952). The opinion specifies that a police investigation report is not subject to public inspection:

. . . first, because it is based upon hearsay statements obtained from others and consists in a large measure of the opinion, conclusion or judgment of the investigator; (Steel v. Johnson, 9 Wash.2d 347, 115 P.2 145) and, secondly, upon the ground that if it is confidential or if it would be detrimental to the best interests of the state, that it will not be permitted to be opened to public inspection or to the inspection of any individual. Mathews v. Pyle, supra, 251 P.2d at 896.

Since issuance of this opinion, the Arizona Court of Appeals has discussed the question in Church of Scientology v. City of Phoenix Police Department, 122 Ariz. 338, 594 P.2d 1034 (1979), stating as follows:

We agree with a 1976 opinion of the Attorney General that, following passage of the 1975 provisions, the proper way to view all requests for information is not to determine whether or not a record is technically a public record or other matter, but instead to determine if release of the information would have an important and harmful effect upon the official duties of the official or agency. 76-43 Ariz.Op.Atty.Gen. (1976).

122 Ariz. at 339, 594 P.2d at 1035.

The court held that disclosure of the files in question was required because they were 20 years old, unrelated to an active investigation, and there was no assertion by the Department that release of the information would reveal confidential sources or involve an invasion of privacy. The court, however, also stated as follows:

[A]ppellee relies upon a series of California Cases, holding that various investigatory materials are not subject to disclosure. See Runyon v. Board of Prison Terms and Paroles, 26 Cal.App.2d 183, 79 P.2d 101 (1938) (letters to parole board); People v. Wilkins, 135 Cal.App.2d 371, 287 P.2d 555 (1955) (current police records); People v. Pearson, 111 Cal.App.2d 9, 244 P.2d 35 (1952) (sheriff records described as "public records but confidential"); City Counsel of City of Santa Monica v. Superior

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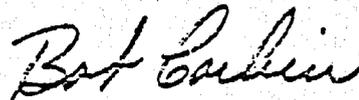
Court, 204 Cal.App.2d 68, 21 Cal.Rptr. 896 (1962) (private investigator's report concerning dismissal of police chief denied to newspaper). All of those cases, however, apparently involved materials of a highly contemporary nature. Disclosure would have resulted in impairment of investigation or invasion of privacy.

122 Ariz. at 340, 594 P.2d at 1036 (emphasis added.)

This language indicates that the Phoenix Police Department may refuse access to files of on-going investigations, if release of the information would hinder an investigation or interfere with official duties. The agency initially determines whether denial of a request is in the "best interests" of the state, although this determination is subject to judicial review under A.R.S. § 39-121.02(A).

If we can further assist you in this matter, please contact this office.

Sincerely,



BOB CORBIN
Attorney General

BC/mm