

IV

Conclusion

In summary, it is our opinion that OJD's privatization of the Maryland Corporate Partnership Project was consistent with that agency's statutory powers. It is further our opinion that the cash receipts of MCP are not public moneys subject to deposit in the State Treasury, inasmuch as MCP is a private corporation separate and apart from the State.

Jack Schwartz
Chief Counsel
Opinions and Advice

J. Joseph Curran, Jr.
Attorney General
Gail Rudie Cohn
Assistant Attorney General

PUBLIC INFORMATION ACT

CONSTITUTIONAL LAW - FREEDOM OF SPEECH AND PRESS -
NONDISCLOSURE OF NAMES AND ADDRESSES OF CRIME VICTIMS

November 16, 1992

The Honorable Janice Piccinni
Maryland Senate

You have requested our opinion on several issues related to the application of the Maryland Public Information Act ("PIA") to complaints by victims of crime. You also ask about the constitutionality of legislation designed to maintain the confidentiality of the names and addresses of the victims of crime. Specifically, your questions are as follows:

1. Are complaints about alleged crimes public records?
2. Is the name and address of a victim of crime disclosable under the PIA?
3. Do victims of crimes presently have a right to maintain the confidentiality of their names and addresses? If not, would the General Assembly be able to afford such a right by amending Article 27, §761 of the Maryland Code?
4. May the General Assembly constitutionally direct all law enforcement agencies in Maryland to enact regulations to maintain the confidentiality of the names and addresses of victims of crime? May the General Assembly constitutionally direct all law enforcement agencies in Maryland to enact regulations to inform victims of crime of their rights, including the right to have their names and addresses maintained in confidence?

For the reasons stated below, we conclude as follows:

1. A complaint filed with a law enforcement agency becomes a "public record," within the meaning of that term in the PIA, when it is memorialized in any form by the law enforcement agency.
2. A record containing the name and address of a victim of a crime would be subject to disclosure under the PIA unless an exemption required

or permitted its nondisclosure. The "investigatory records" exception in the PIA would often permit nondisclosure.

3. Although the PIA recognizes the policy of protecting personal privacy, victims of crime do not presently have an enforceable right to the maintenance of their names and addresses in confidence. That is, no provision in the PIA or other law prohibits disclosure of such names and addresses. Because the PIA in effect incorporates other pertinent law, an amendment to Article 27, §761 affording such a right of confidentiality would effectively prevent disclosure of a crime victim's name and address, should a public record containing them be requested under the PIA.

4. The General Assembly is constitutionally free to direct all law enforcement agencies in Maryland to enact regulations to maintain the confidentiality of the names and addresses of victims of crime and to inform victims of crime of their rights, including any right to confidentiality that might also be enacted by the General Assembly.

I

"Public Records"

The Public Information Act creates a general right on the part of members of the public to examine "any public record": "Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." §10-613(a) of the State Government Article ("SG" Article). The term "public record" is defined quite broadly to mean "the original or any copy of any documentary material that ... is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or the instrumentality in connection with the transaction of public business." SG §10-611(f)(1).¹

Thus, a complaint of a crime to a law enforcement agency is a "public record" as soon as it is embodied in any form by the agency. From that moment on, the complaint would be amenable to a request under the PIA. Whether the complaint or any portion of it would be disclosable is addressed in Part II below.

II

Status of Crime Complaints

A public record must be disclosed upon request unless a provision of the PIA or other law prohibits the custodian from disclosing the record or a provision of the PIA or other law authorizes the custodian to refrain from disclosing it. If a request for a public record is to be denied, the custodian must notify the applicant of the reasons and legal authority for the denial. SG §10-614(b)(3)(ii)1 and 2.

No provision in the PIA prohibits disclosure of the name and address of a victim of crime. Although the PIA states a rule of construction that seeks to prevent "an unwarranted invasion of privacy of a person in interest ..." SG §10-612(b), nevertheless none of the specific exemptions in the law mandates the withholding of a crime victim's name and address.

One of the discretionary grounds for denial would be applicable to the particulars of a complaint that is in an investigatory file. Under SG §10-618(f)(1), "a custodian may deny inspection of records of investigations conducted by ... a police department ... [or] an investigatory file compiled for any other law enforcement ... or prosecution purpose." See generally *Faulk v. State's Attorney*, 299 Md. 493, 474 A.2d 880 (1984).

The custodian is not required to withhold this information, however. Indeed, SG §10-618(a) requires the custodian to release information within any of the grounds for permissible denial in SG §10-618, including the investigatory file exemption, unless "inspection of a part of a public record by the applicant would be contrary to the public interest" Thus, for example, a custodian of an investigatory record containing the name and address of a victim of crime would be required under the PIA to consider not only the privacy interests of the victim but also assertions about the public interest in disclosure that are made by the requester. In the end, the decision is left to the discretion of the custodian, notwithstanding the privacy interests at stake, the PIA does not forbid such disclosure.

III

Constitutionality and Effect of New Legislation

Except as constrained by federal law or the Maryland Constitution, the General Assembly has plenary lawmaking power. See, e.g., *Board of Supervisors of Elections v. Attorney General*, 246 Md. 417, 229 A.2d 388

¹ A public record can be in any form, including a computerized record. SG §10-611(f)(1)(ii).

(1967); *Richards-Furn Corp. v. Board of County Comm'rs*, 233 Md. 249, 196 A.2d 621 (1964).

Legislation that would bar the disclosure of the names and addresses of crime victims raises only one potential constitutional objection: the claim that a law of this kind would violate the free press guarantee of the First Amendment. The First Amendment, however, does not grant a right of access to this information. The "undoubted right [of the press] to gather news ... affords no basis for the claim that the First Amendment compels others - private persons or governments - to supply information." *Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978).

To be sure, once information is made available, the First Amendment generally bars the government from preventing or punishing its publication. *The Florida Star v. B.J.F.*, 491 U.S. 554 (1989). But "it is one thing to say that the government may not restrict the [press] from telling the news to their readers, and quite another to argue that the government has a constitutional duty to supply the [press] with the news to write about. It is for the Congress" - or, in Maryland, the General Assembly - "to establish the extent of access to government documents; the first amendment does not do so." *Garner v. United States Information Agency*, 726 F. Supp. 1183, 1188 (S.D. Iowa 1989). See also *Herald Co. v. McNeal*, 511 F. Supp. 269 (E.D. Mo. 1981) (no first Amendment right of access to closed arrest reports); Stewart, *Or of the Press*, 26 Hastings L.J. 631, 636 (1975) ("The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.")²

Thus, we conclude that there is no constitutional inhibition against the General Assembly's enacting a law that would require all law enforcement agencies to maintain the names and addresses of victims of crime in confidence. The General Assembly is also free to impose on law enforcement agencies a duty to inform victims of crime of their rights, including any right that the General Assembly might provide for the maintenance of their names and addresses in confidence.

Should the General Assembly determine to add such a right to Article 27, §761, as your letter suggests, the legal effect would be the same as if the PIA itself were amended.³ That is, the PIA recognizes in several places that the status of a public record might be determined by other law. See SG §§10-613(a), 10-615, 10-616(a), 10-617(a), and 10-618(a).

IV

Conclusion

In summary, it is our opinion that no provision of current law affords victims of crime the right to insist on maintenance of the confidentiality of their names and addresses. There is no constitutional bar to the General Assembly's enacting such legislation, should it make the policy decision to do so.

J Joseph Curran, Jr.
Attorney General

Jack Schwartz
Chief Counsel
Opinions & Advice

² This discussion addresses only the status of documents prior to the filing of charges. The First Amendment considerations are different once the judicial process has begun. See generally, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986).

³ Care would need to be taken in the drafting of such an amendment to achieve a mandatory effect. At present, all of the provisions of Article 27, §761 are stated as nonmandatory guidelines.