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SACHS
BINDER

June 27, 1983

Acting Sheriff Ernest J. Zaccanelli
Prince George's County Sheriff's
Department
P. O. Box 548
Upper Marlboro, Maryland 20772

Dear Zach:

The purpose of this letter is to respond to your letter of April 26, 1983 to Attorney General Sachs wherein you requested the advice of our office concerning access to the warrant information system maintained by the Prince George's County Sheriff's Department. By letter of May 17, 1983 I requested some clarification of your original correspondence to the Attorney General to which you responded on June 1, 1983. Further information was provided to me as well as an actual on site examination of the system at our meeting on Friday, June 17 in your office.

In order to properly respond to your inquiry, some discussion of the exact nature of the system is necessary.

The warrant information system operated by your office is an automated (computerized) system for keeping track of warrants delivered to the sheriff of Prince George's County for service either by the Circuit Court for Prince George's County, the District Court for Prince George's County or a District or Circuit Court in another jurisdiction which forwards the warrant to Prince George's County for service. As I understand it, terminals (and access therefore to the system) are located in the warrant section of the Sheriff's Office, the Office of the Clerk of the Circuit Court for Prince George's County, the Bail Bond Commissioner and the District Court. The information contained in the system is stored by way of disc storage and is updated and retrieved through on-line video display terminals. This system is separate and distinct from the joint fingerprint information

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file operated by Prince George's and Montgomery Counties and the MILES (Maryland Inter-Agency Law Enforcement System) System operated by the Department of Public Safety and Correctional Services.

The system does not contain CHRI (Criminal History Record Information) on individuals who are "in" the system. The information contained in the system is limited to the name, address and other identifying information regarding a particular individual (race, sex, driver's license number, etc.); information concerning the warrant (charge, case number, issuing court, date of issue); and finally a record of the action taken by the Sheriff's Department in serving the warrant (date of execution, Sheriff's Department identification number, geographic location where served, etc.).

Against this brief factual background, your inquiry is two-fold: (1) Are there any restrictions on the release of information contained in the system when requests for such information are made to your office by the "public" (and specifically bail bondsmen); and (2) Are there any restrictions on allowing members of the "public" and again specifically bail bondsmen) to have access to the terminals themselves.

Access to the Information in the System

Article 76A, Section 1 (b) defines "public records" as:

". . .When not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, micro film, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by any agency or instrumentality of the State or political subdivision, or received by them in connection with the transaction of public business. . ."

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The term "written documents" is defined in Subsection (d) as:

". . .Includes all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics." (Emphasis supplied)

The definition of written documents as stated above makes it very clear that computerized records fall within the definition of public records. The Office of the Attorney General so held in an opinion published at 63 Opinions of the Attorney General 659 (1978).

Section 2 of Article 76A provides generally that public records shall be open for inspection unless the records fall within any of the exemptions contained in Article 76A or are exempted or governed by some other statute.

Before addressing the issue of any exemptions from disclosure, a brief description of the warrant process would be helpful.

An individual gets into the system when a warrant for that individual's apprehension is delivered to the sheriff for service. When the Office of the Sheriff receives a warrant, the individual is entered into the system with whatever identifying or related information (see above discussion) accompany the warrant. Maryland Rule 702 (h) defines the term warrant as:

". . .Means a written order by a court directed to a peace officer commanding him to arrest the person named in it. . ."

A warrant is therefore a court document issued by a judge or a commissioner.

Section 2-203 of the Courts Article (1980 Replacement Volume) provides:

"Unless otherwise provided by law or order of court, any person may, without charge, inspect, examine, and make memoranda or notes from an index or paper filed with the clerk of a court."

Since a warrant is a paper on file with the clerk of a court, it is subject to public inspection without limitation within the court system. All court files unless sealed

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by appropriate court order are properly viewable by any person. See Beckett v. State, 31 Md. App. 85, 355 A.2d 515 (1976).

After a warrant has been executed, a return of the warrant is made to the court which issued it in the same manner as any other process issued by a court for execution. The sheriff's return to the court therefore is likewise a "paper" filed with the clerk of the court and thus, unless sealed, open for public inspection pursuant to 2-203 of the Courts Article as discussed above.

The overwhelming majority of the information contained in the system is therefore subject to public access and inspection (including bail bondsmen) unless it falls within a narrow class of exemptions discussed below. The Office of the Attorney General reached the same conclusion in two prior published opinions. [See 63 Opinions of the Attorney General 543 (1978) and 58 Opinions of the Attorney General 563 (1973)].

Article 76A, Section 3 (b) provides:

"The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest: (i) records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, State's Attorney, the Attorney General, police department, or any investigatory files compiled for any other law enforcement, judicial, correctional, or prosecution purposes, but the right of a person in interest to inspect the records may be denied only to the extent that the production of them would (A) interfere with valid and proper law enforcement proceedings, (B) deprive another person to a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, (F) prejudice any investigation, or (G) endanger the life or physical safety of any person. . ."

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In Superintendent, Maryland State Police v. Henschen, 279 Md. 468 (1977) the Court of Appeals of Maryland interpreted the so-called (3) (b) (i) exemption as:

". . . Excepting records of investigations by the enumerated types of law enforcement agencies or investigatory files compiled for any other law enforcement or prosecution purposes. The statutory provision exempts from the mandatory disclosure requirement two categories of documents: (1) investigatory records of certain named law enforcement agencies; (2) investigatory records of other governmental agencies which were compiled for law enforcement or prosecution purposes."

As noted above, a sheriff's office is one of the "enumerated types of law enforcement agencies" to which the (3) (b) (i) exemption applies.

In actuality however the warrant information system contains little if any "records of investigations. . . intelligence information. . . or security procedures." However, to the extent that any of the information in the system may in fact be a "record of investigation. . . intelligence information. . . or security procedures, the Office of the Sheriff may utilize the (3) (b) (i) exemption to deny access but only to so much of the information in the system as falls within these three categories.

Access to the Computer Terminal

Access to the terminals themselves is a matter not regulated by statute. It is entirely within the discretion of the Sheriff's Office to allow disclosure of the information by allowing the requesting individual to actually view the terminal or to provide a printout. If a particular record requested however contains any excludable information (see above discussion) you may wish to consider providing access by means of a printout rather than viewing the terminal itself so that you may obliterate or otherwise exclude the information not subject to public disclosure.

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Summary

In summary, access to the information contained in the system may be denied only to so much of the information in the system as constitutes records of investigations, intelligence information or security procedures as described above. All other information in the system is subject to inspection. Access to the information subject to inspection may be had by direct access to the terminal or by means of providing a printout at the discretion of the sheriff.

Very truly yours,

Emory A. Plitt, Jr.
Assistant Attorney General

EAP:lae

cc: Avery Aisenstark, Esquire

NOT AN OFFICIAL OPINION OF THE ATTORNEY GENERAL