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Opinion No. 03-124

Sheriff's Accessing E-911 Database to Aid in Serving Warrants

QUESTION

Under the current statute governing the establishment and use of the statewide E-911 database, may a local county sheriff use the database in order to look up addresses to assist in serving warrants?

OPINION

According to information received by our Office, there is currently no statewide database. Information is provided to locally governed emergency communications districts through different means. In most cases, databases are maintained by a phone company, and access by the communications district staff comes only when they receive an emergency phone call. Depending on the facts and circumstances, access to these databases depends on the terms of the contract between the phone company and the communications district, and whether the phone company is contractually required to provide or will consent to the access. A sheriff may be allowed to access a database maintained by and readily accessible to an emergency communications district. District funds, however, may not be used to provide access if it is not for an emergency purpose.

ANALYSIS

This opinion concerns access to E-911 databases by sheriffs. The request refers to access to a "statewide" database. According to information received by our Office, there is currently no *statewide* E-911 database. E-911 service is provided through local emergency communications districts, established under Tenn. Code Ann. §§ 7-86-101, *et seq.* Tenn. Code Ann. § 7-86-102 provides in relevant part:

> (a) The general assembly finds and declares that the establishment of a uniform emergency number to shorten the time required for a citizen to request and receive emergency aid is a matter of public concern and interest. The general assembly finds and declares that the establishment of the number 911 as the primary emergency telephone number will provide a single, primary, three-digit emergency telephone number through which emergency service can be quickly

> and efficiently obtained, *and will make a significant contribution to law enforcement and other public service efforts requiring quick notification of public service personnel*. It is the intent to provide a simplified means of securing emergency services which will result in saving of life, a reduction in the destruction of property, *quicker apprehension of criminals* and ultimately the saving of money.
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> (d) It is the intent that all funds received by the district are public funds and are limited to purposes for the furtherance of this part. The funds received by the district are to be *used to obtain emergency services for law enforcement* and other public service efforts requiring emergency notification of public service personnel, and the funds received from all sources shall be used exclusively in the operation of the emergency communications district.

(Emphasis added).

The question is whether sheriffs "may" use an E-911 database to look up addresses to assist in serving warrants. In researching the opinion, we have consulted officials of the Tennessee Emergency Communications Board ("TECB") for information about these databases. TECB is created and operates under Tenn. Code Ann. §§ 7-86-301, *et seq.* It is our understanding that, depending on how a particular database is maintained, it may be difficult to access in any other way than through receipt of an emergency phone call. The E-911 databases of the vast majority of emergency communications districts are controlled and maintained under contract between the district and a phone company. Databases for these districts are kept on the property of the phone company. Dispatchers cannot initiate access to information on these databases; access, instead, is directly linked to an emergency call. Some districts do maintain their own database, under the supervision of the TECB. Dispatchers for these districts may enter a telephone number and receive a corresponding name and address.

Where a database is under the custody and control of the emergency communications district, we think the district may lawfully grant a sheriff access to the database to look up addresses to assist in issuing and serving an arrest warrant. This conclusion is based, first, on Tenn. Code Ann. § 7-86-102, cited above. That statute reflects the intent of the General Assembly that provision of E-911 service, among other purposes, provide for the quicker apprehension of criminals. The district has developed and maintains the database as a means of providing that service. We think the General Assembly intended that resources developed to provide this service also be used to further the purposes listed in the statute. In addition, this Office has concluded that telephone numbers in the custody of an emergency communications district are public records subject to inspection and review by the public under the state public records act, Tenn. Code Ann. §§ 10-7-501, *et seq.* Op. Tenn. Atty. Gen. 96-144 (December 3, 1996). Since that opinion was written, the General Assembly passed the following statute limiting public access to unlisted numbers:

> (e) Unpublished telephone numbers in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be treated as confidential and shall not be open for inspection by *members of the public* until such time as any provision of the service contract between the telephone service provider and the consumer providing otherwise is effectuated; provided, that addresses held with such unpublished telephone numbers, or addresses otherwise collected or compiled, and in the possession of emergency communications districts created pursuant to title 7, chapter 86, shall be made available upon written request to any county election commission for the purpose of compiling a voter mailing list for a respective county.

Tenn. Code Ann. § 10-7-504(e) (emphasis added).

All of the database information in the possession of an emergency communications district, with the exception of unlisted numbers, therefore, is a public record. We do not think the exception for unlisted numbers was intended to prevent law enforcement officials from having unrestricted access to a database maintained by an emergency communications district, including access to unlisted numbers and addresses. The statute creating these districts expresses legislative intent that provision of the service will aid law enforcement officials in the apprehension of criminals. For this reason, we do not think the General Assembly intended law enforcement officials, including sheriffs, to be "members of the public" with restricted access to unlisted numbers under Tenn. Code Ann. § 10-7-504(e).

Although we conclude that a sheriff must be allowed access to databases maintained by an emergency communications district, district funds may not be used to provide the access. Tenn. Code Ann. § 7-86-102(d) mandates that all funds received by an emergency communications district are to be used exclusively for emergency-related purposes: "[A]ll funds received by the district are public funds and . . . are to be used to obtain emergency services for law enforcement and other public service efforts requiring emergency notification of public service personnel, and the funds . . . shall be used exclusively in the operation of the . . . district". *See* Op. Tenn. Atty. Gen. 95-064 (June 19, 1995) (district funds may not be spent for ambulance services, fire services, police or sheriffs' salaries); Op. Tenn. Atty. Gen. 94-007 (January 13, 1994) (district funds may not be used to buy and install road signs).

With regard to a database maintained by a private telephone company to which only limited access by the emergency communications district is available, however, we think the result is different. Under the provisions of Tenn. Code Ann. § 10-7-503, "all state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee . . . unless otherwise provided by state law." The statute, therefore, ordinarily refers to records maintained by a governmental entity. The test for determining whether material is a public record is whether it was made or received pursuant to law or ordinance or in connection with

the transaction of official business by any governmental agency. *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991). This Office has also concluded that documents reviewed by a public agency in connection with its official business are also public records open for inspection. Op. Tenn. Atty. Gen. 96-011 (February 6, 1996). Whether a database prepared and controlled by a private company for the use of an emergency communications district is a public record open to inspection by the public in the first instance would, therefore, depend on the terms of the contract governing its preparation and use. Where a district's access to the database is severely circumscribed, we think a court would conclude that the database is not a public record open to public inspection. Further, federal law restricts the right of telephone companies to disclose unlisted numbers and related information. *See, e.g.*, 47 C.F.R. § 51.217(c)(3)(iv) (local exchange carriers). Access to this information, therefore, would depend on the terms of the contract between the telephone company and the emergency communications district, and whether the phone company is contractually required to provide or will consent to the access.

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