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Opinion No. 07-39

Investigative Reports Sent to the District Attorney General by Law Enforcement Agencies in Anticipation of Potential Criminal Litigation

QUESTION

Are investigative reports and other evidence sent by law enforcement agencies to the District Attorney General in anticipation of potential criminal litigation open for inspection pursuant to Tenn. Code Ann. § 10-7-503 before the conclusion of the criminal proceedings or a decision by the district attorney general to decline prosecution and to close the investigative file?[1]

OPINION

No. Investigative reports and other evidence sent to the District Attorney General in anticipation of potential criminal litigation are not subject to citizen inspection under Tenn. Code Ann. § 10-7-503 if such records are relevant to a pending or contemplated criminal action. Until all criminal proceedings are concluded or prosecution is declined and the investigative file is closed, access to such items is governed by Tenn. R. Crim. P. 16.

ANALYSIS

Citizen access to government records is governed by Tenn. Code Ann. § 10-7-503(a), which states, in relevant part:

> Except as provided in § 10-7-504(f), all state, county and municipal records. . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of

[1]This issue has been addressed in other contexts in prior opinions of this office. *See, e.g.*, Op. Tenn. Att'y Gen. 80-483 (criminal offense reports containing the complaint and information as to statements from victims and witnesses are not public records because they are work product made in connection with the investigation or prosecution of criminal cases); and Op. Tenn. Att'y Gen. 81-86 (documents created for internal use in the preparation of a prosecution or investigation are 'work product' which is removed from the Public Records Act (Tenn. Code Ann. § 10-7-503) by Tenn. R. Crim. P. 16(a)).

inspection to any citizen, *unless otherwise provided by state law.*

(Emphasis added).

The purpose of the Public Records Act is to afford citizens full access to public documents. *Memphis Publishing Co. v. Cherokee Children & Family Services, Inc.*, 87 S.W.3d 67 (Tenn. 2002). The statute is liberally construed to meet that objective. Access to public records must be provided unless state law provides an exception. *Swift v. Campbell*, 159 S.W.3d 565 (Tenn. Ct. App. 2004).

Under state law, records related to criminal proceedings are not subject to disclosure under the Public Records Act. While criminal proceedings are pending, Tenn. R. Crim. P. 16 governs access to and disclosure of such items. *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987).[2]

Citizens may gain access to such records, pursuant to Tenn. Code Ann. § 10-7-503 only after all criminal proceedings, including actions for post conviction relief and habeas corpus, have come to a final conclusion. *Waller v. Bryan*, 16 S.W.3d 770 (Tenn. Ct. App. 1999).

In some cases, a law enforcement agency might submit a file to the district attorney general for possible prosecution for which a decision to decline prosecution is made. In such cases, the records in the file will become available for inspection pursuant to Tenn. Code Ann. § 10-7-503 only after the district attorney general has declined prosecution and the law enforcement agency has closed the file. *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

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[2]Rule 16(a)(2) of the Rules of Criminal Procedure "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents by . . . state agents or law enforcement officers in connection with the investigation or prosecution of the case . . . . This exception to investigative files in possession of state agents or law enforcement officers . . . appl[ies] where the files are open and are relevant to pending or contemplated criminal action." *Appman*, 746 S.W.2d at 166.

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