

Melissa Scott, Paralegal
Town of Smyrna
315 South Lowry Street
Smyrna, Tennessee 37167

April 4, 2008

Dear Ms. Scott:

The Town of Smyrna presented the following facts relative to the open records request at issue in this opinion:

A juvenile male was pulled over for a traffic offense by an officer with the Smyrna Police Department. He was issued a citation, but it was civil in nature. No criminal charges are pending and no criminal charges are being contemplated with regard to this traffic stop. The minor's mother has subsequently requested copies of the videotape of the stop, the audiotape of the stop, and the radar reading. The Smyrna Police Department is the custodian for all three of these records. This case will be adjudicated in juvenile court. Since this stop resulted in a civil citation and not one criminal in nature, you believe that none of the records requested by the mother are to be deemed "law enforcement records or files" and are unsure as to whether access to these records should be granted to the mother of the juvenile (hereinafter "requestor") who was stopped/ received the citation.

Based upon the facts presented, the controlling sections of the Tennessee Code Annotated (hereinafter "T.C.A.") and relevant case law, it is this Office's opinion that the requestor is not entitled to access to or copies of the requested records.

Analysis

The sections of the T.C.A. relevant to this issue are 10-7-503, 10-7-506, 37-1-146, 37-1-153, and 37-1-154. T.C.A. Section 10-7-503(a) reads as follows:

Except as provided in § 10-7-504(f), all state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, 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 inspection to any citizen, unless otherwise provided by state law.

The presumption from this statute is that all government records are open for public inspection, with limited exceptions. T.C.A. Section 10-7-506(a) goes on to explain:

In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, that the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

So, based upon these two statutory provisions, unless the documents requested are exempt from public inspection by some other state law, the requestor has the right to the records requested. In this instance, since the subject of the records sought is a juvenile, it is necessary to examine all statutes relevant to juvenile offenses, specifically juvenile driving offenses, and the confidential nature of the records relevant to those offenses.

T.C.A. Section 37-1-146 specifically references juvenile traffic offenders, the courts that have jurisdiction over these cases and the possible disposition of the cases. Subsection (a) of T.C.A. Section 37-1-153 sets out the limited number of individuals granted access to juvenile court records and files; however, the limited inspection does not apply to cases "arising under 37-1-146." If the analysis stopped with this statutory provision, the records would appear to be accessible; however, T.C.A. Section 37-1-154 addresses law enforcement records and accessibility to those records in juvenile court proceedings. Since the present matter will be adjudicated in juvenile court and the Smyrna Police Department is the custodian of the records requested, this statutory provision provides an exception to the Tennessee Public Records Act and as such, only those individuals specifically set out in the statute would have a right to inspect the requested material. Parents and/or guardians are not given the right to inspect law enforcement records in T.C.A. Section 37-1-154.

As stated above, your Office is of the opinion that because the offense is civil in nature as opposed to criminal, the records requested do not constitute "law enforcement records." However, in researching this issue, this Office found nothing in either case law or statute that makes this distinction. Additionally, there is no definition of "law enforcement records" that clarifies if there is any distinction to be read into the statute.

Additionally, the decision made by the Tennessee Court of Appeals in *Green v. Metropolitan Government of Nashville* supports this conclusion. *Green v. Metropolitan Government of Nashville*, 2002 WL1751436 (Tenn. Ct. App 2002). In *Green*, a requestor made an open records request to the Metro Nashville Police Department (hereinafter "police department") for records relating to his arrest for multiple sexual

offenses against a minor. The police department refused to allow the requestor to inspect the records, and the requestor subsequently appealed. The police department argued that T.C.A. Section 37-1-154, along with a couple of other statutes, exempted the records from inspection by the requestor. The Court disagreed. The Court said the following:

In the present case, it is both consistent with the rules of statutory construction and eminently reasonable to assume that the police records that the legislature intended to shield from public view by enacting Tenn.Code Ann. § 37-1-154 are those pertaining to proceedings in the juvenile court, and no others. *Id* at 4.

The Court makes no distinction between cases that are civil in nature as opposed to criminal, instead its focus is on all police records pertaining to cases in juvenile court.

Conclusion

Based upon all of the abovementioned, it is this Office's opinion that T.C.A. Section 37-1-154 exempts the requested records from public inspection except by those individuals set out in the statute and are therefore unavailable for inspection and copying by the requestor.

Please let us know if you have further questions or need clarification.

Elisha D. Hodge
Open Records Specialist