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Mr. Don Jacobs
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You have requested an opinion from this Office that addresses the following issue:

Does Tenn. Code Ann. Section 37-1-154 provide for the confidentiality of statements taken from juveniles in a criminal investigation when the juveniles are neither the victims in the matter nor are they or anyone else being charged as the perpetrators of the criminal act under the juvenile code?

It is the opinion of this Office that the statements are public records that are not exempt from public inspection pursuant to Tenn. Code Ann. Section 37-1-154.

II. Analysis

Justice Rehnquist, concurring in the United States Supreme Court's opinion in *Smith v. Daily Mail Pub. Co.*, said the following with regard to the confidentiality of juvenile court proceedings:

It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity. This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and "bury them in the graveyard of the forgotten past." *In re Gault*, 387 U.S. 1, 24-25, 87 S.Ct. 1428, 1442, 18 L.Ed.2d 527 (1967).

Smith v. Daily Mail Pub. Co., 443 U.S. 97, 107-08 (June 1979).

The *Gault* opinion that Justice Rehnquist referenced in the *Smith* case was one of several decisions handed down by the United States Supreme Court between 1966 and 1970 that dealt with juveniles and their due process rights in juvenile court proceedings. While the court in *Gault* acknowledged that the purpose of the juvenile court system is rehabilitation and treatment which is best accomplished when the juvenile offender's acts remain a secret from the public, the court also said:

This claim of secrecy, however, is more rhetoric than reality. Disclosure of court records is discretionary with the judge in most jurisdictions. Statutory restrictions almost invariably apply only to the court records . . . Of more importance are police records. In most States the police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of juvenile records.

. . . there is no reason why, consistently with due process, a State cannot continue if it deems it appropriate, to provide and to improve provision for the confidentiality of records of police contacts and court action relating to juveniles.

In re Gault, 387 U.S. 1, 24-25 (1967).

As a result of the attention brought to the juvenile court system through these decisions, a number of states passed legislation addressing the issues discussed in the decisions. Tennessee appears to be one of those states. In 1970, the first statutory provisions regarding juvenile courts, their purpose and jurisdiction were codified. Tenn. Code Ann. Section 37-1-101 sets out a list of "public purposes" that are to be effectuated through the provisions found in Title 37, Part 1 of Tennessee Code Annotated. One of the first enumerated purposes reads, "Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation." Tenn. Code Ann. Section 37-1-101(a)(2). The list goes on to address the need for laws to be passed relative to juveniles that will have uniform application throughout the state and it lays out the duties, purpose, and jurisdiction of juvenile courts. Tenn. Code Ann. Section 37-1-101(b)-(d).

Tenn. Code Ann. Section 37-1-153, which makes juvenile records confidential, and Tenn. Code Ann. Section 37-1-154, which makes law enforcement records confidential were also codified in 1970. Tenn. Code Ann. Section 37-1-154 is the provision that is relevant to this opinion and the pertinent part of the provision reads as follows:

Unless a charge of delinquency is transferred for criminal prosecution under § 37-1-134, the interest of national security requires or the court otherwise orders in the interest of the child, the law enforcement records and files shall not be open to public inspection or their contents disclosed to the public. . .

It is the opinion of this Office, that the law enforcement records that are exempt from public inspection pursuant to Tenn. Code Ann. Section 37-1-154 are those records relative to a juvenile that is under the jurisdiction of the juvenile court. It is the opinion of this Office that this interpretation is supported not only be the statutory language and case law referenced above, but also by the fact that while the public cannot access these records, the "juvenile court having the child before it in any proceeding" and "Counsel for a party to the proceeding" which can reasonably be inferred to be a proceeding in juvenile court, is permitted to inspect the law enforcement records referenced in Tenn. Code Ann. Section 37-1-154. Tenn. Code Ann. Section 37-1-154(a)(1)-(2). Additionally, Tennessee Code Ann. Section 37-1-154(d)(1) makes it a offense for anyone "to intentionally disclose or disseminate to the public the law enforcement records concerning a charge of delinquency." Finally, the Tennessee Court of Appeals in *Green v. Metropolitan Government of Nashville and Davidson County* said the following:

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.

Green v. Metropolitan Government of Nashville, 2002 WL 1751436 at *3 (Tenn. Ct. App. July 30, 2002). It is important to note however, the the court in *Green* goes on to decide that it is as important to protect the identity of juvenile victims of crime as it is to protect the identity of juvenile offenders, regardless of whether the vicitims' offenders are being tried in criminal court of juvenile court. *Id.* at *4.

Based upon all of the above cited statutory law and case law, it is the opinion of this Office that Tenn. Code Ann. Section 37-1-154 does not provide for the confidentiality of statements taken from juveniles in a criminal investigation when the juveniles are neither the victims in the matter nor are they or anyone else being charged as the perpetrators of the criminal act under the juvenile code.

Please feel free to call me at (615) 401-7891 if you have any further questions.

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