

Police Records



A reporter's
state-by-state
access guide to
law enforcement
records



Although most states provide for the release of information about arrests and criminal convictions, there have been at least two recent movements aimed at hiding this valuable information from public view.

In Nashville, Tenn., a Vanderbilt University law professor has sought enforcement of a more than 30-year-old federal consent decree that shields arrest information from disclosure.

At the same time, an American Bar Association commission recommended numerous restrictions on criminal records before withdrawing the resolution from consideration by the ABA House of Delegates in August 2007.

In the early 1970s, a class-action lawsuit in Nashville, Tenn., resulted in two consent decrees (a mix between a contractual agreement and a court order) that limited how the city, county and state governments could use arrest information.

Specifically, in 1973 the government agreed not to use information about arrests that did not result in criminal convictions in considering applications for employment with the Metropolitan Government or its board of education.

Additionally, in 1974, the government entities agreed not to disseminate information about arrests made by the Metropolitan Government except to law enforcement agencies for law enforcement purposes.

Jump ahead more than 30 years to 2007 and *Doe v. Briley* is active again after a law professor who represented the class in the original case sought to have the consent decree enforced.

James F. Blumstein, a law professor at

Vanderbilt University, said he learned via a newspaper article in spring 2006 that the Metropolitan Nashville Police Department was displaying on a department Web site pictures, names and other information about men arrested for solicitation of prostitution.

"I had moved on," Blumstein said. "I hadn't monitored this. I thought and assumed that they would act in good faith; we negotiated this in good faith. Every once in a while you would see some arrest information come out, but I thought that came through the court system because news media have access to court records."

Blumstein said the reason behind the case is the protection of the interest an individual holds in being able to obtain employment, and not having an arrest that does not result in a criminal conviction hamper that interest.

"The evidence we developed at the time and was conceded by the government, and there's still pretty good evidence of that, is that people can be discriminated against in their employment when arrest records are available," Blumstein said.

He said that when raw arrest information is released, it does not afford the arrestee a chance to defend the arrest.

However, media groups have argued in court documents that changes in law since the consent decrees were accepted require the agreements to be modified.

Citing a United States Supreme Court decision (*Paul v. Davis*, 424 U.S. 693 (1976)), attorneys for Nashville's NewsChannel 5 have argued that one's reputation is not a liberty or property interest protected by the Constitution. They have also argued, citing a Sixth Circuit case from 1996, that there is no privacy interest "in one's criminal record."

Although Blumstein agreed that a change in law could be grounds for a modification to the consent decrees, he said the time to raise such an argument has come and gone. He said the appropriate time for that argument "would have been sometime after 1976," when Paul was decided.

The television station, however, has also argued that the information should be released under the Tennessee Public Records Act, which provides access to "all state, county and municipal records" unless a state statute provides otherwise, according to the station's court filings.

"Moreover, subsequent Tennessee case law has made it clear that the agreement to enter into the Consent Decree by the Metropolitan Government and by the State itself is unenforceable and a violation of public policy," NewsChannel 5 wrote in court documents.

The television station also pointed out that the Tennessee Court of Appeals has

"held that a governmental entity cannot enter into confidentiality agreements with regard to public records."

The station also argued that the decrees operate as a form of prior restraint in violation of the First Amendment.

Frank Gibson, director of the Tennessee Coalition for Open Government, said he believes advocates for overturning or redrafting the consent decrees have a good shot at winning.

"The government lawyers, who are on our side in this particular case, probably said it best in their argument before the federal judge," Gibson said. "The public has a right to know about crime in their neighborhoods. And, if the police department can't report that they've arrested someone in a crime that might be of great public interest then the public doesn't know about it."

Gibson also expressed concern that the consent decrees could negatively impact programs such as Crime Stoppers.

"This would make such programs as Crime Stoppers obsolete," he said. "Most Crime Stoppers are looking for people who've been charged with a crime, but haven't been convicted. This consent decree says the police department cannot identify anybody arrested for a crime until they are convicted."

Blumstein disagreed with Gibson's assessment, saying that the consent decrees do not prevent officials from releasing information about suspect who have yet to be arrested. He further said that the decrees do not prevent the police from announcing an arrest, they just cannot name the specific individual who has been arrested.

The case is still pending in federal District Court in Nashville.

'Guilt isn't the only measure'

Sparked by a speech by U.S. Supreme Court Justice Anthony Kennedy, the American Bar Association created two commissions to examine the national criminal justice system.

The first produced recommendations in 2004 related to sentencing procedures, specifically calling for the repeal of mandatory minimum sentences.

The current commission, the ABA Commission on Effective Criminal Sanctions, has made recommendations to restrict access to criminal history information.

These recommendations were to be presented to the ABA's House of Delegates in August 2007, but were withdrawn at the last minute.

In its recommendations, the commission urged governments to limit access, within the limits of the First Amendment to criminal cases where charges are dropped or not pursued, those that result in acquittal, where

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convictions are overturned, or where confessions are set aside.

The commission also had recommended that access to misdemeanor and felony convictions not involving “substantial violence, large scale drug trafficking, or conduct of equivalent gravity” be restricted after “the passage of a specified period of law-abiding conduct.”

One recommended exception would have allowed such convictions to be used in later prosecutions or sentencing hearings. The commission had also recommended that judges should be able to grant access to records for “good cause shown” or where “public welfare support[s] revocation” of restriction.

The recommendations had also stated that disclosure of restricted records need not be made to employers or anyone else questioning an individual’s criminal background, except for law enforcement. The commission had also recommended that liability for an employer’s negligence in hiring be removed so long as the relevant records had been restricted.

The commission also recommended that credit reporting agencies be prohibited from releasing information about restricted records.

Chris Joyner, a reporter at The Clarion Ledger in Jackson, Miss., said he opposes any attempt to close access to records, but that the ABA commission’s recommendations scared him.

“In these specific recommendations, they scare me because they place the documents entirely on one side of the ledger in the hands of law enforcement,” Joyner said prior to the withdrawal of the recommendations. “That provides no opportunity for the press or for individual citizens to provide some sort of check on that power. It requires us to place a mount of trust on the court system that the court generally does not require.”

Joyner said court records are among the most important held by the government because they reflect how individuals are judged innocent or guilty.

He said it is important for court records to remain open not only to see who has been convicted, but also to see who has been



AP PHOTO BY LEFTERIS PITARAKISA

Availability of arrest records varies widely from state to state; some make little information available, while others make arrest information and entire ‘rap sheets’ available to the public.

found innocent.

“Innocence is a measure that is important for the press to be able to audit,” Joyner said. “If they close these records where someone is charged and found innocent, we’re sort of going around half blind.”

He said what impact these recommendations would have, if adopted by local governments, would be delayed. He said the impact may not be noticed until someone wants to look at large-scale issues within the court system.

“A big part of the watchdog function of the press is to go back and look at large numbers of cases to see what they tell us about the way the system is working for people,” Joyner said. “If those records are then sealed after the fact, we’re going to lose that ability.”

Sources for information about crimes, criminals

Information about crimes, criminals and their victims is a staple for most local newspaper and broadcast news operations. Reporters obtain it from police, the courts and

other sources, often with little difficulty.

If a charge has been filed and the case has been turned over to a court, access may be greater because the U.S. Constitution and many state constitutions guarantee public access to the criminal judicial system. But if the information you seek is in law enforcement officials’ hands, obtaining it can be more difficult.

Information may be kept in several different forms at a police station. Often there is a “blotter” -- a log of all calls for assistance received by police. It may provide rudimentary information about the location of an event, the time and a brief description of the caller’s request.

For additional information about an item on the blotter, you may want to see the incident report filed by the officer who answered the call. In some police departments all reports are kept in one office. In others, the reports may be filed in the office that will investigate the incident further. For example, a report about a robbery would go to the “crimes against persons” office and a report about prostitution or drugs would go to the vice squad.

A third source of information is the arrest or “booking” log, which provides basic information about individuals charged with crimes. Often it includes the name, address and age of the suspect and brief descriptions of charges filed against the individual.

To determine whether a person is being held in jail or has been released on bail, you may have to inquire at another office at the police station or the clerk’s office in the court where suspects are arraigned.

Cultivate your local police

In practice, getting to know members of the police force could be the most important step in learning about events, criminal and noncriminal, and getting access to police records.

At the scene of a crime, accident or other emergency, a friendly officer may provide information that you will not find in an incident report until hours later, if at all.

But be careful. Some of the information may be incomplete or not entirely accurate. Publishing such material without verification might lead to a libel suit. You should read the actual incident report, or contact higher officials who can confirm the information, before writing your story.

In most states, fair and accurate reports of the contents of official documents, including police records, are privileged. In those states, a news organization that accurately reports the contents of an official police document containing false information cannot be held liable for the inaccuracies. In a few cases courts have ruled that a reporter who has not read the report from which the information

was obtained cannot invoke the privilege.

Therefore, even if a police official has provided information from an incident or arrest report over the telephone, it is a good practice to visit the police station and read the document yourself.

At headquarters, police personnel may alert you to a seemingly innocuous blotter entry that could be a page one story. Your source may let you read the relevant reports or refer you to someone else who has them.

Laws and rules govern access

The open records laws in most states guarantee that police records are open unless some specific exemption would allow officers to deny access to the information. Some of those laws entitle you to inspect records during regular business hours.

Others allow you to ask for copies. The time limit for providing copies will vary from state to state.

If, in your state, an open records request would compel you to wait for paper copies of information, you may want to invoke the access laws only as a last resort.

Individual police officers may not be aware of the requirements of the state's open records laws. Be prepared to point to statutory provisions that entitle you to inspect and copy public records.

Most police agencies also have written policies concerning what information is public and who may release arrest and incident reports. Acquaint yourself with those policies so that you can invoke them when needed.

If the policies are at odds with the requirements of the open records law, you

may want to bring this to the attention of the city, county or state attorney.

Statutes and case law on media access to police records vary greatly from state to state. Some states' open records laws, including Indiana's, Minnesota's and Oregon's, go into great detail about access to arrest records, incident reports and "rap sheets."

Open records laws in some states make no mention of law enforcement records. In some of these states, court opinions specify the law enforcement records that are open.

Often the records law will exempt "investigatory" records. An informal poll of state press associations showed that their foremost concern in gaining access to police records is the broad and frequent interpretation of police records as "investigatory," even when release would clearly not harm investigations.

State-by-state guide to access

The following summaries of state laws are derived from the "police records" section of the Reporters Committee's "Open Government Guide," available online at www.rcfp.org/ogg. These guides are written by attorneys in each state who often litigate these issues on behalf of journalists.

Alabama

Since police departments and their officers can properly be considered "public officers and servants of counties and municipalities" within Alabama Code § 36-12-1 (2001), all police records that are not expressly made confidential by statute or that must be kept confidential to protect a pending criminal investigation should be open.

Accident reports (Alabama Uniform Traffic Reports) are available to the public.

The police blotter is a public record under the authority of *Birmingham News Co. v. Watkins*, No. 38389 (Cir. Ct. of Jefferson County, Ala., Oct. 30, 1974) (based upon the First Amendment, not Public Records Law, with discretion for police department to withhold portions of records or entire records if and as necessary to prevent "actual interference" with law enforcement).

There is no specific Alabama statutory provision or case law authority regarding public access to 911 tapes, but the Alabama Attorney General has held that 911 tapes are public records, Op. Att'y Gen. Ala., No. 2001-086 (Jan. 26, 2001), and Alabama media have been able to obtain access to such tapes in several instances in recent years.

Law enforcement "investigative reports and related investigatory material" are not

public records. Ala. Code § 12-21-3.1(b) (Supp. 2005). However, there is authority for public access to complaint reports, including the front side of incident/offense reports subject to the right of the sheriff to withhold or redact certain information on a case-by-case basis depending on the nature of the case, the status of the investigation, whether the victim would be subject to threats or intimidation, or when public disclosure would hinder the investigation; *Washington County Publications v. Wheat*, No. CV-99-94 (Cir. Ct. of Washington County, Ala., May 1, 2000); as well as search and arrest warrants, with supporting affidavits and depositions, after a search warrant or arrest warrant is executed and returned. 197 Op. Att'y Gen. Ala. 13 (Oct. 10, 1984).

There is no specific statutory or case law authority regarding public access to records of closed investigations.

There is authority for public access to the following arrest records: arrest reports, with redaction of witness identification and witness reports at the discretion of the police department, *Birmingham News Co. v. Deutsch*, CV 85-504-132 JDC (Cir. Ct. of Jefferson County, Ala., Equity Div., Aug. 19, 1986) (consent order); and arrest warrants and search warrants, with supporting affidavits and depositions, after execution and return. 197 Op. Att'y Gen. Ala. 13 (Oct. 10, 1984).

Compilations of criminal histories by the Alabama Criminal Justice Information Center (ACJIC) are available to only those persons with a "right to know" or "need to know" as determined by the ACJIC Com-

mission. Op. Att'y Gen. Ala. No. 2005-042, 2005 Ala. AG LEXIS 9 (Jan. 18, 2005); Ala. Code § 41-9-590 *et seq.* (2000); Ala. Code § 41-9-636 to 642 (2000).

There is statutory or case law authority for closure of the following records regarding crime victims: Court files regarding crime victim's petition hearing that reveals the victim's address, telephone number, place of employment, and related information, Ala. Code § 15-23-69 (1995); Crime Victims Compensation Commission reports and information obtained from law enforcement officers and agencies, Ala. Code § 15-23-5 (1995); child abuse reports and records, Ala. Code § 26-14-8(c) (Supp. 2005); and complainant identification on arrest reports. *Birmingham News Co. v. Deutsch*, CV 85-504-132 JDC (Cir. Ct. of Jefferson County, Ala., Equity Div., Aug. 19, 1986).

Alabama Attorney General opinions have approved closure of information gathered about a crime victim who is also a witness to a crime. Op. Att'y Gen. Ala. No. 2000-225, 2000 Ala. AG LEXIS 166 (Aug. 30, 2000); Op. Att'y Gen. Ala. No. 2000-203, 2000 Ala. AG LEXIS 136 (Aug. 8, 2000).

There is no statutory or case law authority regarding public access to records of confessions.

Rule 3.9 of the Alabama Rules of Criminal Procedure protects the identity of confidential informants when sworn testimony is taken to support the issuance of a search warrant.

There is no statutory or case law authority regarding public access to records of police techniques; however, the Alabama Crimi-



AP PHOTO BY GEORGE WIDMAN

Dispatchers work inside a 911 call center in Manheim, Pa. Recordings of the calls are often only released if police think there will be a benefit in doing so, although in many states they will not be released at all.

nal Justice Information Center's proposed changes to the Law Enforcement Officers' Handbook state that a law enforcement agency may redact information from Alabama Uniform Incident/Offense Reports that "would reveal investigatory techniques." See ACJIC, *Law Enforcement Officers' Handbook*, Part III (proposed changes) (October 2005), available at <http://www.alabamapress.org/alapress/forms/LEOfficersHandbook.pdf>.

A mug shot in a police computer database is a public record. Op. Att'y Gen. Ala. No. 2004-108, 2004 Ala. AG LEXIS 35 (Apr. 1, 2004).

State law requires each sheriff to keep in the sheriff's office, subject to public inspection during office hours, a well-bound book that must include a description of each prisoner received into the county jail. Ala. Code § 36-22-8 (2001).

Alaska

Statutes requiring or authorizing the withholding of police records include the Public Records Act, the Criminal Justice Information Systems Privacy and Security Act (Alaska Stat. [hereinafter "AS"] 12.62), and AS 28.15.151, dealing with drivers' records and traffic reports.

These laws are dealt with in the comprehensive survey of the law governing access to police records contained in the Nov. 25, 1994, Op. Att'y Gen. No. 663-93-0039 (referred to hereafter as "1994 Police Records AG Opinion.").

Police records are specifically addressed in the Public Records Act, as a result of a 1990 amendment that added AS 40.25.120(6). This exception to the general public right to inspect public records provides that an agency may withhold law enforcement records that: could reasonably be expected to interfere with enforcement proceedings; would deprive a person of a right to a fair trial or an impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim or witness; could reasonably be expected to disclose the identity of a confidential source; would disclose confidential techniques and procedures for law enforcement investigations or prosecutions; or would disclose guidelines for law enforcement investigation or prosecution if the disclosure could reasonably be expected to risk circumvention of the law.

The addition of subsection 120(6) (which mirrors the federal FOIA provisions for law enforcement records, and was substantially

copied by subsequent amendment of the Anchorage Municipal Code) simply codified what was generally understood to be the prevailing common law, and was consistent with an earlier superior court case granting access to a police tape recording. *Anchorage Daily News v. Municipality of Anchorage*, 11 Media L. Rptr. 2173 (Alaska Super. Ct., 3rd Jud. Dist., April 26, 1985). There, the court ordered release of tape recorded conversations between a police officer and a municipal assembly member stopped for a traffic violation. The court stated that in order to construe the municipal ordinance exempting police records as being consistent with state law, police records must be disclosed, at least when a case is closed and in the absence of other circumstances that compel continued withholding, such as endangerment of witnesses and disclosure of confidential informants or investigative techniques.

Records that are otherwise public remain subject to disclosure when they are used for, included in, or relevant to law enforcement proceedings and other litigation. AS 40.25.122.

The Alaska Rules of Court were revised in 1989 to exempt search warrants and related affidavits, receipts and inventories from dis-



closure until after an indictment is returned, except upon a showing of good cause, and to make these documents presumptively public after charges are filed. Ak.R.Cr.P. 37(e).

Accident reports are presumably open, subject to the restrictions permitted by AS 40.25.120(a)(6).

Police blotters are presumably open under the public records statute, and case law interpreting similar statutes.

911 tapes are presumably available on the same basis as other police records, and have been obtained by news media, but in any given case access may be subject to arguments based on the Victim's Rights Act, and balancing of personal privacy interests in individual cases.

The state public records law, in AS 40.25.120(a)(6)(A) (and a similar provision in the Anchorage Municipal Code and some other municipal ordinances) exempts from disclosure law enforcement records or information that "could reasonably be expected to interfere with enforcement proceedings." The statute does not expressly distinguish between active and closed investigations, but records from a closed case are less likely to interfere with proceedings.

Arrest records are presumably public. See 1994 Police Records AG Opinion, § C; see also, Jan. 1, 1989, Op. Att'y Gen. No. 663-89-0142.

The names of victims of sexual assaults or kidnapping can no longer be given out. In addition, the business and residence addresses and phone numbers of victims or witnesses of any crimes cannot be given out. See generally, Article 2 of the Victim's Rights Act, AS 12.61.100 - .150.

Nothing in the statute specifically exempts confessions, but as a practical matter disclosure of confessions by police and prosecutors is governed by standards issued by the American Bar Association. Confessions often become public when they are attached to court pleadings filed in connection with motions to suppress their use as evidence in a trial.

The Public Records Act specifically provides that an agency may withhold records or information compiled for law enforcement purposes that could reasonably be expected to disclose the identity of a confidential

source, or that would disclose confidential techniques and procedures for law enforcement investigations or prosecutions. AS 40.25.120(6)(D), (E). See 1994 Police Records AG Opinion, § A.1.a.

The Public Records Act specifically authorizes an agency to withhold records or information compiled for law enforcement purposes that could reasonably be expected to interfere with enforcement proceedings, or that would disclose confidential techniques and procedures for law enforcement investigations or prosecutions. AS 40.25.120(6)(A)(E)(F). See 1994 Police Records AG Opinion, § A.1.b.

The Public Records Act does not specifically address photographs or mug shots within the context of law enforcement records, but as these would be within the general definition of public records, there is no apparent reason why mug shots would not be available or unavailable according to the criteria set forth in AS 40.25.120(6).

Arizona

The release of police records is governed by the Arizona Public Records Law. A.R.S. §§ 39-121 to -125.

Executive orders 98-6, 98-4 and 95-5 have prohibited the release of accident reports for commercial purposes.

911 tapes are public records and thus presumed open for inspection and copying.

In *Cox Arizona Publications Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1998 (1993), the Arizona Supreme Court reversed the court of appeals' ruling that the public is not entitled to examine police reports in "an active ongoing criminal prosecution." The Arizona Supreme Court held that such a "blanket rule . . . contravenes the strong policy favoring open disclosure and access." Thus, public officials bear the "burden of showing the probability that specific, material harm will result from disclosure" before it may withhold police records. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984).

However, A.R.S. § 13-2813 prohibits disclosing "an indictment, information or complaint . . . before the accused person is in custody or has been accused."

A person who has been wrongly "arrested, indicted or otherwise charged," can have the arrest record cleared and such information shall not be released to any person. A.R.S. § 13-4051.

A.R.S. § 41-619.54(C) provides that all criminal history records in the hands of the Board of Fingerprinting are private and not subject to A.R.S. § 39-121. Further, it provides that any good cause exception hearing is also private and not subject to A.R.S. § 39-121.

Arizona does not specifically prohibit the

disclosure of a victim's identity contained in police records. Accordingly, the general provisions of Arizona's Public Records Law governs.

Confessions in police records are public records and thus presumed open for inspection and copying.

Records of reports of criminal activity "to a silent witness, crime stopper or operation game thief program" are not public. A.R.S. § 12-2312.

Wiretapping activity cannot be revealed except to specific public officials involved in the investigation. A.R.S. § 13-3011.

Mugshots are public records and thus presumed open for inspection and copying.

Arkansas

The Arkansas Freedom of Information Act ("FOIA") exempts "[u]ndisclosed investigations by law enforcement agencies of suspected criminal activity." Ark. Code Ann. § 25-19-105(b)(6). A record must be investigative in nature to fall within the exemption, *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991), and only records of "ongoing criminal investigations" are exempt. *Martin v. Musteen*, 303 Ark. 656, 799 S.W.2d 540 (1990); *McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 (1989).

By statute, traffic accident reports completed by a police agency must be made available for public inspection "at all reasonable times." Ark. Stat. Ann. § 27-53-305(a). A separate statute provides that accident reports by the state police are open to the public. Ark. Code Ann. § 27-53-209.

Police blotters are open, as are incident reports, dispatch logs, and similar "routine" records. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991); Ark. Op. Att'y Gen. No. 87-319.

Emergency calls recorded by a publicly supported 911 communications center are open. Ark. Op. Att'y Gen. Nos. 99-409, 95-018, 94-120, 94-100, 90-236. However, a statute exempts "subscriber information" from disclosure. Ark. Code Ann. § 12-10-317(a)(2).

The FOIA's law enforcement exemption, Ark. Code Ann. § 25-19-105(b)(6), applies to records that are investigative in nature, *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991), but only if the investigation remains ongoing. The *Hengel* case indicates that information, such as an officer's speculation about a suspect's guilt, his or her views as to the credibility of witnesses, and statements by informants fall within the exemption. See also Ark. Op. Att'y Gen. No. 99-110 (exemption applies to opinions and impressions of investigating officer).

Arrest records are open. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761

(1991). However, records of the arrest or detention of a juvenile are exempt unless disclosure is authorized by written order of the juvenile division of circuit court or the juvenile is formally charged with a felony in the criminal division. Ark. Stat. Ann. § 9-27-352.

So-called “rap sheets” are exempt from disclosure by virtue of Ark. Code Ann. § 12-12-1003(e). This information, which is maintained by the Arkansas Crime Information Center, cannot be obtained from prosecutors, local police departments, or other authorized persons who have received it from the center. E.g., Ark. Op. Att’y Gen. No. 94-054.

A statute passed in 1997 provides that the address and telephone number of a victim of a sex offense, a victim of any violent crime, a minor victim of any offense, or a member of the victim’s family “shall be exempt from the Arkansas Freedom of Information Act.” Ark. Code Ann. § 16-90-1110(c)(2).

Records reflecting confessions are apparently open to the public, unless the particular record is considered “investigative” in nature. See Ark. Op. Att’y Gen. No. 89-158.

The FOIA does not contain a specific exemption for the identities of confidential informants, although such information is exempt under the law enforcement exemption, Ark. Code Ann. § 25-19-105(b)(6), so long as an investigation is in progress. Ark. Op. Att’y Gen. No. 2002-149, 90-305.

Generally, the FOIA’s law enforcement exemption will not apply to agency manuals that contain policies and instructions to law enforcement personnel, since they are not investigative in nature. Cf. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991). The attorney general has opined that law enforcement manuals are exempt only if they are “part of an ongoing investigation.” Ark. Op. Att’y Gen. No. 85-134.

Mugshots are open. The FOIA definition of “public record” is broad enough to include photographs, see Ark. Code Ann. § 25-19-103(5)(A), and a mug shot is not sufficiently investigative to qualify for protection under the law enforcement exemption. Cf. *Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991).

California

Open records law in California is represented by statute primarily through the California Public Records Act (“CPRA”),



AP PHOTO BY DAVID KIDWELL, POCONO RECORD

Journalists rely on access to the records created during police investigations and other information gathered from crime scenes to report on important stories.

Cal. Gov’t. Code §§ 6250 through 6276.48, and by the state’s constitution through the Sunshine Amendment, Cal. Const. Art. I, § 3(b), passed by voters in 2004.

Accident reports are exempt. Cal. Veh. Code § 20012. Abstracts of accident reports required to be sent to the state are open to the public for inspection at the DMV during office hours. Cal. Veh. Code § 1808.

A police blotter is a public record as to information that is expressly stated to be subject to disclosure in the statute. Cal. Gov’t Code § 6254(f)(1), (2) and (3).

911 tapes are public as to most information contained in tape but tape itself arguably not required to be disclosed under investigatory records exemption. Cal. Gov’t Code § 6254(f)(1), (2), and (3).

Specified facts from investigatory or security records, without disclosure of the records themselves, must be disclosed unless disclosure would endanger the successful completion of an investigation, or related investigation, or endanger a person involved in the investigation. Cal. Gov’t Code §§ 6254(f)(1), (f)(2) and (f)(3).

For arrests, the agency must disclose such facts as the name, occupation and detailed physical description of every individual arrested by the agency, as well as the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual

is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds. Cal. Gov’t Code § 6254(f)(1).

For complaints or requests for assistance, the agency must disclose such facts as the time and nature of the response, the time, date and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property or weapons involved. Cal. Gov’t Code § 6254(f)(2).

The California Public Records Act’s exemption for investigatory files does not terminate when the investigation terminates. *Williams v. Superior Court*, 5 Cal. 4th 337, 362, 852 P.2d 377, 19 Cal. Rptr.2d 882 (1993).

Arrest records, including a list of specific details, must be released, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation. Cal. Gov’t Code § 6254(f)(1); see also *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal. App. 4th 588, 22 Cal. Rptr. 2d 409 (1993).

Local summary criminal history information (a “rap sheet”) is exempt from disclosure. Cal. Penal Code § 13300.

The name and age of victims shall be made public, unless disclosure would endanger the



safety of a person involved in an investigation. However, the name of any victim of certain crimes defined by various provisions of the Penal Code relating to sex offenses may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. Cal. Gov't Code § 6254(f)(2).

If a confession is part of an agency's investigatory records compiled for correctional or law enforcement purposes, this information is not required to be disclosed. However, once introduced into evidence in a criminal proceeding, other than a grand jury proceeding, public access to the information is presumed absent a constitutional showing justifying closure.

The identity of confidential informants and any statements made by them are expressly exempt from disclosure by the CPRA. Cal. Gov't Code § 6254(f).

Police techniques or "security procedures" are expressly exempt from disclosure. Cal. Gov't Code § 6254(f).

Access to mug shots appears to be discretionary. *See* Cal. Op. Att'y Gen. No. 03-205 (2003) (sheriff has discretion to furnish copies of mug shots to public or media but once released a copy must be made available to all who make request). In California, law enforcement agencies routinely make mug shots available to the press.

Colorado

Accident reports filed with the Motor Vehicle Division are public records under Colo. Rev. Stat. §§ 42-4-1610 and 42-1-206.

Records of official actions, including records of arrests on a "police blotter," are public records under Colo. Rev. Stat. §§ 24-72-303 and 24-72-304.

911 tapes are subject to release. *See* Colo. Rev. Stat. §§ 24-72-303 and 24-72-304.

For police investigatory records, public access is discretionary with the custodian, Colo. Rev. Stat. § 24-72-305(5), who may deny inspection if disclosure would be "contrary to the public interest." *See Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985). The statute does not differentiate between active and closed investigations.

Arrest records are open under Colo. Rev. Stat. § 24-72-303(1), unless sealed by

the court under Colo. Rev. Stat. § 24-72-308(1).

Compilations of criminal history are open under Colo. Rev. Stat. § 24-72-303.

Victims' identities, insofar as they are part of police records, are public records subject to inspection. The only exception is the name of victims of sexual assault. Colo. Rev. Stat. § 24-72-304(4).

Confessions are public records if procured during an official action by a criminal justice agency.

Confidential informants' identities and statements are subject to withholding if their disclosure may harm an ongoing investigation or cause other injury to the public interest. Colo. Rev. Stat. § 24-72-305(5). *See Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985).

Records of security procedures may be withheld under Colo. Rev. Stat. § 24-72-305(5) if disclosure would be contrary to the public interest.

Mug shots taken at the time of arrest should be deemed open because they are "photographs... which are made, maintained or kept by any criminal justice agency for use in the exercise of functions required or authorized by law," and they are records of an "official action." Colo. Rev. Stat. § 24-72-303(1), §§ 24-72-302(4) & (7).

Connecticut

As per the Connecticut Freedom of Information Act ("FOIA," codified as amended at Conn. Gen. Stat. §§ 1-200 through 1-241), law enforcement records are exempt if "compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) signed statements of witnesses, (C) information to be used in a prospective law enforcement action if prejudicial to such action, (D) investigatory techniques not otherwise known to the general public, (E) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (F) the name and address of the victim of a sexual assault... or (G) uncorroborated allegations..." Conn. Gen. Stat. § 1-210(b)(3)

In *Calibey v. State Police*, Do. #FIC 86-310 (Jan. 28, 1987), the Freedom of Information Commission held that a report of a fatal motor vehicle accident was not exempt from disclosure under FOIA.

In *Town of Trumbull v. FOIC*, 5 Conn. L. Trib. No. 34 (1979), the Superior Court held

that daily activity sheets, after the deletion of certain exempt information, were not exempt from disclosure under FOIA.

There are no specific provisions or reported authorities regarding 911 tapes.

In *Gifford v. FOIC*, 227 Conn. 641, 631 A.2d 252 (1993) the Supreme Court ruled that reports prepared by police in connection with arrests were not required to be disclosed to the public during the pendency of the related criminal prosecution, but Connecticut law other than the FOIA law requires limited data to be released regarding arrests.

There are no specific provisions or decisions regarding mug shots, and are presumed open unless a specific exemption applies.

District of Columbia

Open records law in the District of Columbia derives primarily from the District of Columbia Freedom of Information Act of 1974. D.C. Code Ann. § 2-531 *et seq.* ("D.C. Act").

The privacy exemption, D.C. Code Ann. § 2-534(a)(2), investigatory records exemption, *id.* at § 2-534(a)(3), and arson reporting exemption, *id.* at § 2-534(a)(9), may apply. Complaints and other specified police records shall be open for public inspection under D.C. Code Ann. § 5-113.06.

The mayor's office has ruled that when a defendant has pleaded guilty to a charge and a videotaped confession was never used against him in court, the privacy rights of the police officers involved and the victim's family bring the videotape under the privacy exemption of the D.C. act. The defendant was found to have forfeited his privacy rights, and parts of the tape could be made public that merely identified him as the perpetrator. *In re Appeal of Molly Pauker, Esq.*, (unnumbered FOIA App.) (Office of the Mayor, Nov. 3, 1989).

No sex offender registration information is available as a public record except those records made public by regulations promulgated by the Mayor. D.C. Code Ann. § 22-4017.

Delaware

Delaware open records law derives by statute through the state's Freedom of Information Act. 29 Del. C. § 10001 *et seq.* (the "Act" or "FOIA").

Statutory exemptions related to criminal records and files are poorly worded and contradictory. Police agencies are willing to release general statistical information but are reluctant to release individual files, often relying on the investigatory records exception. *See* 29 Del. C. § 10002(g)(3).

Accident reports are exempt only if the disclosure would constitute an invasion of personal privacy or constitute an investigative file. *See* 29 Del. C. § 10002(g)(3); 29

Del. C. § 10002(g)(6).

Police blotters are not exempt; 911 tapes may not be exempt.

Investigatory records in active investigations are exempt under the third exemption the investigatory files exemption. See 29 Del. C. § 10002(g)(3). Closed records may also still be exempt. See Del. Op. Att’y Gen., No. 99-ib14 (Nov. 5, 1999).

Arrest records are exempt under open records exemption four except an individual’s own record. 29 Del. C. § 10002(g)(4).

Past practice suggests that compilations of criminal histories may be released. *Bd. of Managers of Delaware Justice Info. Sys. v. Gannett Co.*, 808 A.2d 453 (Del. Super. 2002).

As a matter of practice, investigatory reports are released to victims, though the Act appears to treat the information as exempt. See 29 Del. C. § 10002(g)(3).

Confessions are exempt under both exemption three and exemption four. See 29 Del. C. §§ 10002(g)(3), (4).

Information on confidential informants is exempt if the disclosure would constitute an endangerment to local, state or national welfare and security under open records exemption five. 29 Del. C. § 10002(g)(5).

Police techniques could be exempt under open records exemptions five. 29 Del. C. § 10002(g)(5), (16). See also Del. Op. Att’y Gen., No. 05-ib19 (Aug. 1, 2005).

Mug shots may be exempt under exemption four. 29 Del. C. § 10002(g)(4).

Florida

The Florida open records law is codified at Fla. Stat. sections 119.01 to 119.15. As a general rule, accident reports are subject to chapter 119 disclosure requirements. However, police accident records often encompass exempt information, such as confessions or investigatory data.

Police blotters are subject to public inspection.

To the extent that records of 911 tapes are not otherwise statutorily exempt from the mandates of the Public Records Law (Chapter 119) (i.e., confessions, etc.), they are subject to public inspection.

The Legislature has exempted from pub-



AP PHOTO BY MICHAEL PROBST

Information from active investigations can be withheld under most state open records acts.

lic inspection certain criminal intelligence and investigative records and files. Fla. Stat. sec. 119.07(3)(f). The police investigative/intelligence records exemption only applies when such records are active. Fla. Stat. sec. 119.07(3)(b). Criminal intelligence/investigative information is considered to be “active” while such information is directly related to pending prosecutions or appeals. Fla. Stat. sec. 119.011(d). Once the conviction and sentence have become final, the exemption no longer applies. *State v. Kokal*, 562 So.2d 324 (Fla. 1990). Records disclosed to a criminal defendant are not exempt as investigative or intelligence information. Fla. Stat. sec. 119.011(3)(c)(5).

The following information relating to arrest records is not considered to be criminal intelligence/investigative information and is available for inspection: the name, sex, age and address of a person arrested; the time, date and location of the incident and of the arrest; the crime charge; documents given or required by law or agency rule to be given to the person arrested; and information and indictments except as provided in Fla. Stat.

secs. 905.26 119.011(3)(c).

Juvenile records traditionally have been treated differently from other records within the criminal justice system. The Florida Juvenile Justice Act exempts most information pertaining to juveniles. Fla. Stat. sec. 39.045(5). However, Fla. Stat. sec. 39.045(9) authorizes a law enforcement agency to release for publication the records of a child taken into custody under certain limited circumstances, such as where the juvenile has been taken into custody for a violation of law which would be a felony if committed by an adult.

Criminal histories, like other non-exempt public records, are subject to the statutory disclosure requirements of the Public Records Law, Chapter 119. However, courts have the power to seal or expunge records containing criminal history information under statutorily specified circumstances. Fla. Stat. sec. 943.058.

The name, sex, age and address of the victim of a crime is open to public inspection under the Public Records Law. Fla. Stat. sec. 119.011(3)(c)(2), but other information concerning victims, such as the victim’s telephone number or address or personal assets, is exempt, Fla. Stat. 119.03(3)(s).

Information revealing the “substance of a confession” of a person arrested or of witness lists exchanged pursuant to the provisions of Fla. R. Crim. P. 3.220 is not subject to the disclosure requirements until such time as the charge is finally determined by adjudication, dismissal or other disposition. Fla. Stat. sec. 119.07(3)(k).

Information revealing the identity of confidential informants or sources is exempt from the provisions of Chapter 119. Fla. Stat. sec. 119.07(3)(c).

Information revealing police surveillance techniques, procedures or personnel, and information revealing undercover personnel of any criminal justice agency is not subject to public inspection. Fla. Stat. sec. 119.07(3)(d).

Mug shots are subject to public inspection unless they are exempt criminal intelligence information or are otherwise exempt. Fla. Stat. § 119.011(1); Fla. Stat. § 119.07(3)(b).

Georgia

The Georgia Open Records Act (“the Act”) specifically provides that “initial police arrest reports and initial incident reports”



are public records and must be disclosed. O.C.G.A. § 50-18-72(a)(4).

In 1999, the General Assembly limited access to individual Uniform Motor Vehicle Accident reports to those parties named in the report or those that otherwise have a “need” for the report as defined by statute. O.C.G.A. § 50-18-72(4.1).

The Act permits access to public records of an emergency “911” system, except information which would reveal the name, address, or telephone number of a person placing the call. O.C.G.A. § 50-18-72(a)(16).

The Act exempts records of pending investigations. O.C.G.A. § 50-18-72(a)(4). Records related to closed or terminated investigations are therefore subject to disclosure under the Act.

The Act specifically provides that initial police arrest reports are public records. O.C.G.A. § 50-18-72(a)(4).

Under O.C.G.A. § 35-3-34(d.2) the public may obtain access to records of in-state felony convictions through the Georgia Crime Information Center or local law enforcement agencies. *See Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

The Act exempts records the disclosure of which would reveal the identity of a confidential source. O.C.G.A. § 50-18-72(a)(3).

The Act does not exempt records of confessions, records identifying crime victims, records revealing police techniques, or mug shots.

Hawaii

Open records law in Hawaii is represented by the state’s Uniform Information Practices Act (“UIPA”). Act 262, 14th Leg., Reg. Sess. (1988), *reprinted in* 1988 Haw. Sess. Laws 473 (codified at Haw. Rev. Stat. ch. 92F (Supp. 1991)).

The government may justify a denial of a request for police records by invoking particularly one of two UIPA exemptions. It may cite Section 92F-13(2), which excepts “[g]overnment records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable.” Haw. Rev. Stat. § 92F-13(2) (emphasis added). In

other instances it may cite Section 92F-13(3), which excepts “[g]overnment records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function.” Haw. Rev. Stat. § 92F-13(3).

Monthly supplemental homicide reports prepared by county police departments must be made available for public inspection and copying. Supplemental Homicide Reports, Office of Information Practices (“OIP”) Op. Ltr. No. 94-1 (Mar. 11, 1994). The reports contain information concerning the age, gender, and race of the victim(s) and offender(s); the weapon used; and the circumstances of the homicides.

Copies of traffic citations are available for public inspection and copying. Public Access to City and County of Honolulu Traffic Citations, OIP Op. Ltr. No. 95-20 (Aug. 21, 1995).

Police blotters, chronological records of police arrests, are public records when they concern adults. Public Access to Police Blotter Information, OIP Op. Ltr. No. 91-4 (Mar. 25, 1991).

In *Burnham Broad. Co. v. County of Hawaii*, Civ. No. 92-0161 (Haw. 3d Cir. Mar. 1992), a Hawaii court found that a county government agency was required to release 911 tapes and that its failure to do so created agency liability for the media plaintiffs’ court costs and attorneys’ fees, but privacy concerns could outweigh the public’s interest in agency accountability when 911 tapes involve living individuals.

Investigative reports are confidential if their disclosure would likely interfere with agency law enforcement activities, frustrate a legitimate government function, or reveal deliberative processes. An examination of all factors is necessary to determine whether such reports must be disclosed. *See, e.g.*, RFO 98-004 - Honolulu Police Department; Request for Opinion on *The Honolulu Advertiser; Request for Internal Affairs Reports*, OIP Op. Ltr. No. 98-5 (Dec. 20, 1998). Investigatory records regarding closed criminal investigations should be made available after redaction of information identifying the victim, witnesses and defendant’s Social Security number, home address, and home telephone number. Release of Police Records, OIP Ltr. Op. No. 99-2 (Apr. 5, 1999).

Section 831-3.1 prohibits the dissemination by the state of any record of arrest that is not followed by a valid conviction, convictions which have been expunged, convictions in which no sentence is imposed, and misdemeanor convictions after the lapse of 20 years. *Cf.* Request for Written Opinion Regarding Disclosure of Arrest Records, OIP Op. Ltr. No. 97-5 (June 10, 1997).

Disclosure of a confession while a case is still open may be denied if its disclosure

might threaten to frustrate a legitimate government function or interfere with law enforcement measures.

The UIPA has no *specific* general exception for information compiled for law enforcement purposes that would, if disclosed, identify a confidential informant or reveal confidential investigative techniques. Nevertheless, the OIP has exempted from disclosure agency records that would interfere with investigative or law enforcement procedures of agencies.

Standards of police conduct are not confidential unless they concern purely internal matters. Disclosure of case-specific police techniques, on the other hand, may be protected if disclosure would frustrate the legitimate government function of law enforcement. *See* Public Access to General Order Nos. 528, 601, 602, 604, 606, 804, and 805, OIP Op. Ltr. No. 95-13 (May 8, 1995).

Mugshots are government records for the purposes of the UIPA. Police Department Mug Shots, OIP Op. Ltr. No. 94-12 (June 29, 1994). However, when an arrest record which includes the mug shots is expunged, the mugshots must remain confidential. OIP Op. Ltr. 03-09 (June 26, 2003). Moreover, after one year from the date of a person’s arrest, the mug shot is protected from disclosure unless: (1) an active prosecution of the charge is pending, or (2) the arrest results in a conviction.

Idaho

Police records are subject to disclosure pursuant to Idaho Code § 9-335, which generally exempts active and inactive investigatory records.

Accident reports should be available to the public under the terms of the statute, although they are not expressly discussed.

Police blotters should also be available to the public under the terms of the statute, although they are not expressly discussed.

911 tapes are handled in an erratic manner by Idaho law enforcement agencies. Although there is no express exception that applies to such tapes, agencies claim that release of the tapes would constitute an invasion of privacy.

Records of active investigations compiled for law enforcement purposes by a law enforcement agency are generally exempt, Idaho Code § 9-335(1), but only to the extent that the production of such records would: (a) Interfere with enforcement proceedings; (b) deprive a person of 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 or confidential information furnished only by the confidential source; (e) disclose investigative techniques or procedures; or (f)

endanger the life or physical safety of law enforcement personnel. Records of inactive investigations shall be disclosed unless the disclosure would violate the same provisions. Idaho Code § 9-335(2).

Arrest records should be available for public inspection and generally there is little difficulty in obtaining such records.

The identity of a crime victim is generally kept confidential by law enforcement agencies until the filing of a criminal complaint. This is based upon agency claims that the victim's privacy rights must be protected. There is no express exemption in the statutes, however, which specifically exempts the name of a crime victim from disclosure.

Confessions are not specifically addressed in the Idaho open records statutes. Most law enforcement agencies and prosecutors consider confessions to be "investigative records" and therefore exempt from disclosure, unless and until the confession is filed with the court or introduced in open court.

Names of confidential informants are exempt from disclosure pursuant to Idaho Code § 9-335(1).

Information concerning police techniques is exempt from disclosure pursuant to Idaho Code § 9-335(1).

Mug shots should be, and generally are, available to the public under the public records act.

Illinois

Open records law in Illinois is codified primarily through the state's Freedom of Information Act at 5 ILCS 140/1 to 11.

Traffic accident reports, rescue reports and records that identify witnesses to traffic accidents may be provided by agencies (except in a case for which a criminal investigation is ongoing) without constituting a clearly unwarranted per se invasion of personal privacy, which would otherwise

make the records exempt. See 5 ILCS 140/7(1)(b)(v).

Police blotters and chronologically maintained arrest records are open. See 5 ILCS 140/7(1)(d)(I). Arrest information is also to be provided to the news media under the arrest reports provision of the State Records Act, 5 ILCS 160/4a; the article of the Civil Administrative Code of Illinois concerning the Department of State Police, 20 ILCS 2605/2605-302; the Local Records Act, 50

or provide information to administrative, investigative, law enforcement or penal agencies." See 5 ILCS 140/7(1)(b)(v). This includes community liaisons to the police department. *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188, 808 N.E. 2d 56, 283 Ill. Dec. 506 (1st District, 2004). Also, releasing the identity of victims of most crimes probably would not be considered an invasion of privacy under the common law.



Access to mug shots is inconsistent, even from town to town in the same state. The City of Los Angeles reportedly refuses to release mug shots unless investigators decide a picture will help with a criminal investigation, but neighboring jurisdictions and county and state officials often release them. Top, from left: Nick Nolte, Mel Gibson, Hugh Grant; bottom, from left: Paris Hilton, Nicole Richie, Lindsay Lohan.

ILCS 205/3b; and the Campus Security Act, 110 ILCS 12/15.

911 tapes are not specifically exempt, so they are open unless, possibly, a law enforcement agency invokes exemptions under 5 ILCS 140/7(1)(b)(c), (e) or (v).

Investigatory records are closed. See 5 ILCS 140/7(1)(c)(i) to (viii). The statute makes no distinction between active and closed files.

Compilations of criminal histories are closed except for specific exemptions listed in the Act. See 5 ILCS 140/7(1)(d)(I) to (v).

The Act seals the identity of victims and other "persons who file complaints with

Confessions are possibly closed until admitted in court. See 5 ILCS 140/7(1)(c)(I) to (iii).

Records related to confidential informants and police techniques are closed. See 5 ILCS 140/7(1)(c)(iv) and (v).

The Act does not specifically address mug shots, but they are generally open.

Indiana

Although the Indiana Access to Public Records Act does not specifically address written reports of accident investigations (as opposed to the notation of an accident on a police blotter), Ind. Code § 9-26-2-3 provides a right of access to reports created under the motor vehicle code.

Police agencies must maintain and disclose a daily log or record that lists suspected crimes, accidents or complaints,

as well as the time, substance and location of all complaints or requests for assistance received by the agency, as well as victim information in most cases. Ind. Code § 5-14-3-5(c).

The law does not specifically address 911 tapes. Presumably these tapes would be available unless they were deemed to be investigatory records. See also Ind. Code § 16-31-2-11.

The statute leaves it to the discretion of the police agency whether it will release or hold confidential its investigatory records. Ind. Code § 5-14-3-4(b)(1). There is no distinction made between open or closed



investigations.

The following information must be made available on arrest: identifying information (including name, age and address), the charges on which the arrest is based, and information relating to the circumstances of the arrest (such as the time and location of the arrest, the arresting officer, and the arresting law enforcement agency). Ind. Code § 5-14-3-5(a).

The statute requires the disclosure of the name and age of any victim, unless the victim is a victim of a sex crime. Ind. Code § 5-14-3-5(c)(3)(B).

There is no specific provision on the disclosure of confessions, confidential informants, records containing police techniques, or mug shots. These would fall in the general category of discretionary police investigative records.

Iowa

Open records law by statute in Iowa can be found in chapter 22 of the state code.

Accident reports filed by law enforcement officers (not individuals involved in the accident) are available to any party to an accident, the party's insurer, agent, attorney or the attorney general upon written request and payment of \$4.00 fee. Iowa Code § 321.271. 70 Op. Att'y Gen. 420, 421.

Investigative records, including blotter information, is confidential, but the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Iowa Code § 22.7(5).

Records of closed investigations are ordinarily treated by law enforcement as public, subject to applicable exceptions.

911 tapes are presumably public information, but information about criminal activity which peace officers receive from third parties is confidential. *State Ex Rel. Shanaban v. Iowa District Court*, 356 N.W. 2d 523, 528 (Iowa 1984).

Records of current and prior arrests are public records. Iowa Code § 22.7(9).

Records of police techniques are closed.

Iowa Code § 21.5(1)(g) and (h).

Mug shots are not addressed in the act but are presumably public.

Kansas

Open records law in Kansas is codified through the Kansas Open Records Act, K.S.A. 45-215, *et seq.*, ("KORA").

Accident reports are open to the public. K.S.A. 45-217(b). *See also* Op. Atty. Gen. 79-17 (1979).

Police blotters are open to the public. K.S.A. 45-217(b). The incident based reporting system code sheet used by law enforcement agencies is a public record that must be disclosed upon request. Op. Atty. Gen. 93-9 (1993).

911 tapes are not specifically addressed, but presumably open unless part of a criminal investigation. K.S.A. 45-221(a)(10).

Investigatory records are generally closed to the public.

However, a district court may order disclosure in an action brought under K.S.A. 45-222 (civil remedies to enforce KORA) if the court finds that disclosure, among other things, is in the public interest and would not compromise investigations. K.S.A. 45-221(a)(10).

Records compiled in the process of detecting, preventing or investigating violations of criminal law are not open. Mug shots are not open. Op. Atty. Gen. 87-25 (1987).

Documents stating charges filed against individuals in municipal court and specifying scheduled court dates are open. Op. Atty. Gen. 87-145 (1987). Jail books listing persons in jail are open. Op. Atty. Gen. 87-25 (1987). However, correctional records pertaining to an identifiable inmate are exempt from disclosure. K.S.A. 45-221(a)(29). Op. Atty. Gen. 84-124 (1984). Op. Atty. Gen. 82-226 (1982).

Juvenile offender records generally cannot be disclosed unless a K.S.A. 38-1608(a) statutory exception applies. Op. Atty. Gen. 95-94 (1995).

The name, address, phone number or any other information which would specifically identify the victim of a sexual offense, pursuant to K.S.A. 21-3501 *et seq.*, may not be revealed. K.S.A. 45-221(a)(10)(F). Information concerning other victims is not specifically addressed and is presumably open for inspection unless part of a criminal investigation. K.S.A. 45-221(a)(10).

Confessions are not specifically addressed, but presumably open unless they are part of a criminal investigation. K.S.A. 45-221(a)(10).

The identity of an undercover agent or informant is confidential. K.S.A. 45-221(a)(5).

Mug shots are not open. Op. Atty. Gen. 87-25 (1987).

Kentucky

As per the Kentucky Open Records Act ("ORA"), police records relating to ongoing or prospective investigations are exempt from disclosure. Once the investigation is completed, the records are open to inspection. *See* KRS 61.878(1)(h). Police records of juveniles are exempt. *See* 93-ORD-42 (discussing exemption mandated by KRS 610.320(3)).

Accident reports are presumably open. Police blotters are presumably open unless "the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication." KRS 61.878(1)(h).

911 tapes are generally open; nondisclosure of any tape "must be justified with specificity and with reference to the particular statutory exemption upon which the agency relies." 94-ORD-144.

Arrest records are open. 93-ORD-42.

An administrative regulation forbids the release of "[c]entralized criminal history records maintained by the Kentucky Justice Cabinet . . . except as provided in KRS 17.150." 200 KAR 1:020 § 4(6).

Records identifying victims are open under the records law. *See* 94-ORD-133.

Confessions are open unless they would disclose informants or release information to be used later "in a prospective law enforcement action or administrative adjudication." KRS 61.878(1)(h). Records identifying confidential informants are exempt. *See* KRS 61.878(1)(h).

Mug shots are presumably open.

Louisiana

As per the Louisiana Public Records Act, accident reports are available to parties to accidents, insurers, attorneys, and "news-gathering organizations." La. Rev. Stat. Ann. § 44:4(24); § 32:398(H), (K)

Police blotters and booking information summaries shall always be open for public inspection. *Id.*; La. Rev. Stat. Ann. § 44:3(A)(4); Op. Att'y Gen. 78-1159. The information contained in an outstanding warrant is public record, and is not outweighed by privacy interests. Op. Att'y Gen. 95-294.

Despite their historical treatment as public records (Ops. Att'y Gen. 97-233, 96-89, 93-152, 92-209, 90-576), the state First Circuit recently held that 911 tapes are protected under the "privileged communications between a health care provider and patient" exception in the Public Records Act. *Hill v. East Baton Rouge Parish Dep't of Emergency Med. Servs.*, No. 2005 1236, 2005 La. App. LEXIS 2611 (La. App. 1st Cir. Dec. 22, 2005) (citing La. R.S. § 44:4.1(B)(5)).



AP PHOTO BY THE EXPRESS-TIMES

Bethlehem, Pa., Police Commissioner Francis R. Donchez pulls a criminal records file at police headquarters for a reporter who requested information as part of a 2005 statewide FOIA audit.

Records of active investigations are exempt, except for the initial police report. La. Rev. Stat. Ann. § 44:3(A)(l), (4). Records of closed investigations are public records only after pending or reasonably anticipated litigation is finally adjudicated or settled. La. Rev. Stat. Ann. § 44:3(A)(l).

Arrest records are exempt until the arrested party has been adjudged or pleads guilty. La. Rev. Stat. Ann. § 44:3. Op. Att’y Gen. 97-417.

Compilations of criminal histories are public information, if they do not pertain to a pending or reasonably anticipated criminal prosecution. See Op. Att’y Gen. 77-1370 and *State v. Sanders*, 357 So. 2d 1089 (La. 1978).

The act does not require that victims be identified in the initial investigation report. Nor does it prohibit disclosure in that report of the identity of victims except for victims of sexual crimes. La. Rev. Stat. Ann. § 44:3(A)(4)(b).

Confessions are exempt during pendency of criminal litigation. La. Rev. Stat. Ann. § 44:3(A)(l).

Records identifying confidential informants are exempt. La. Rev. Stat. Ann. § 44:3(A)(2).

Records disclosing police techniques are exempt. La. Rev. Stat. Ann. § 44:3(A)(3). But a general assertion that certain documents

reveal investigative techniques is insufficient to justify the privilege.

An opinion of the Attorney General suggests that mug shots are not available for inmates or ex-offenders without special authorization from the Department of Corrections. Op. Att’y Gen. 94-338.

Maine

Open records law in Maine is codified through the state’s Freedom of Access Act (“FOAA”) in sections 401-410 of Title 1 of the Maine Revised Statutes Annotated.

Accident reports are generally available.

When a police blotter is used, it is generally an available record.

Transcripts of 911 calls are available to the public. The transcript will not contain names, addresses or telephone numbers of persons placing the call or receiving assistance. Upon good cause shown by the requester, a court may release the audio tape. 25 M.R.S.A. § 2929.

Records of active and inactive investigations are subject to the same statute. Pursuant to 16 M.R.S.A. § 614(1), reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a criminal justice agency are confidential and may not be disseminated if there is a

reasonable possibility that public release or inspection of the reports or records would interfere with law enforcement or invade personal privacy.

Arrest records are available. 16 M.R.S.A. §§ 611-622.

The identity of a victim generally receives no special treatment under the FOAA statute or any related law. However the identity of minor victims of sexual offenses is confidential and prosecutors shall refrain from unnecessary pre-trial publicity that might reveal the minor’s identity. 30-A M.R.S.A. § 288.

The availability of a confession is controlled by the availability of investigatory records of the offense involved. 16 M.R.S.A. §§ 611-622.

Records revealing confidential informants are not available. 16 M.R.S.A. §§ 611-622.

Records describing police techniques are confidential. 16 M.R.S.A. § 614(1)(G).

Mug shots are available. 16 M.R.S.A. §§ 611-622.

Maryland

Open records law in Maryland is codified through the state’s Public Information Act (“PIA”), Md. Code Ann., State Gov’t §§ 10-611 to 10-628.

Accident reports are closed to attorneys



or their agents or employees for marketing or soliciting legal services, or to anyone working on behalf of such. § 10-616(h)(2). Otherwise, accident reports are open for public inspection.

Police blotters are not exempt from disclosure, because they are not records of investigations or investigatory files. *See* §§ 10-616(h), 10-618(f).

911 tapes are public records, except for those portions exempted from disclosure for other reasons. 71 Op. Att’y Gen. 288 (1986).

Investigatory records may be closed under specified circumstances. § 10-618(f). The State’s Attorney is neither required nor authorized to disclose a police investigative report or any part of it that was used for grand jury proceedings. *Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 133, 737 A.2d 592, 600 (1999). Records of active investigations conducted by the Attorney General, a State’s Attorney, city or county attorney, police department or sheriff may be closed. § 10-618(f). Once an investigation is closed, investigatory files are subject to disclosure, based upon an amendment to the comparable FOIA exemption. *See Fioretti*, 351 Md. at 83, 716 A.2d at 267; *Bowen v. Davison*, 135 Md. App. 252, 761 A.2d 1013, 1015 (2000).

Arrest records are open, because they are not records of investigations or investigatory files. 63 Op. Att’y Gen. 543 (1978); *see also* § 10-616(h), 10-618(f).

Compilations of criminal histories are open, since they are not records of investigations or investigatory files. *See* §§ 10-616(h), 10-618(f).

Victims’ names and addresses are open to disclosure under the PIA. *See* §§ 10-616(h), 10-618(f). However, the custodian of such a record would be required under the PIA to consider not only the privacy interests of the victim, but also assertions about the public interest in disclosure that are made by the requester. 77 Op. Att’y Gen. 227 (1992).

Disclosure of confessions, if part of an investigatory file, may be denied. § 10-618(f). Otherwise, the confession is a non-exempt and, therefore, producible part of the police record. § 10-616(h).

Records relating to or disclosing confi-

dential informants may be closed to disclosure pursuant to § 10-618(f)(2)(d).

Records relating to or disclosing police or other law enforcement investigative techniques may be closed pursuant to § 10-618(f)(2)(v).

Mug shots that are part of police records are subject to disclosure. § 10-616(h).

Massachusetts

Accident reports are routinely available. *See* General Law c. 66, § 10(a).

Police logs listing, in chronological order, responses to valid complaints, crimes reported, names and addresses of persons arrested and charges against such persons, are public records. G.L. c. 41, § 98F.

911 tapes are available subject to investigatory exceptions.

Investigatory records for active investigations are normally not available. G.L. c. 4, § 7, cl. 26(f). Records of closed investigations are available if disclosure would not “probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” G.L. c. 4, § 7, cl. 26(f).

A police log record of arrests is open. G.L. c. 41, § 98F.

Criminal Offense Record Investigation (CORI) exemptions may apply to certain records relating to criminal histories, including criminal charges, arrests, pre-trial proceedings or other judicial proceedings where the information sought was recorded as a result of the initiation of criminal proceedings. G.L. c. 6, § 167-178B. If information being requested does not concern a crime for which incarceration is possible, then the record is public. CORI law also does not apply to evaluative information (records primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation, or parole) or intelligence information (records and data compiled by a criminal justice agency for the purpose of criminal investigation). *See* G.L. c. 6, § 167.

Criminal records may be obtained if evidence is offered that the public interest in disseminating the requested CORI outweighs the personal privacy interests of the subjects whose information is sought. Such information can be obtained only from the Criminal History Systems Board in Boston.

Names of victims of rape and sexual assault are confidential. G.L. c. 41, § 97D.

No statutory restriction applies to confessions but they are normally not available. It is unethical for a lawyer or District Attorney to make pre-trial announcement or release of such information. Massachusetts Rules of Professional Conduct Rule 3.6 (*cited in* Supreme Judicial Court Rule 3:07).

Names of confidential informants are normally not available. Massachusetts recognizes an absolute informant privilege, *Worthington v. Scribner*, 109 Mass. 487 (1872); *District Attorney v. Flatley*, 419 Mass. 507, 510, 646 N.E.2d 127, 129 (1995), except in the case of non-confidential information and informants, *Commonwealth v. Congdon*, 265 Mass. 166, 174, 165 N.E. 467, 469 (1928).

Information on police techniques and procedures is available if released by police. Otherwise, probably not. *See* G.L. c. 4, § 7 cl. 26(f); c. 39, § 23B(4).

There are no statutory or case law restrictions on release of mug shots, although the investigatory exception may apply in some circumstances. Generally, release is probably discretionary with law enforcement authorities.

Michigan

Open records law in Michigan is codified through the state’s Freedom of Information Act (“FOIA”), Mich. Comp. Laws Ann. (“MCLA”) §§ 15.231 - .246.

The names and addresses of persons who had been injured, potentially injured or killed in automobile accidents are subject to the FOIA privacy exemption. *Baker, P.C. v. City of Westland*, 245 Mich. App. 90, 627 N.W.2d 27 (2001)

Police incident reports are generally public unless the public body can justify the application of a FOIA exemption. *See Evening News Ass’n v. City of Troy*, 417 Mich. 481, 339 N.W.2d 421 (1983).

According to the Attorney General, a law enforcement agency may refuse to release the name of a person who has been arrested, but not charged, in a complaint or information, with commission of a crime, on the grounds that disclosure would result in a “clearly unwarranted invasion of privacy.” 1979-80 Op. Att’y Gen. 255, 282 (1979). Similarly, a public body may withhold records showing the final disposition of an arrest record of a person found not guilty or where there was a decision not to prosecute, because disclosure would constitute a clearly unwarranted invasion of an arrested person’s right to privacy in the absence of a public interest in his or her record. 1979-80 Op. Att’y Gen. at 282-83.

Since a sex crime complainant’s past sexual history would concern intimate details of a highly personal nature, it would be exempt from disclosure as an unwarranted invasion of personal privacy, as would the complainant’s address and telephone number and the names of parents and their address and telephone number. *Pennington v. Washtenaw County Sheriff*, 125 Mich. 556, 336 N.W.2d 828 (1983).

Confessions are presumably open.

Records identifying confidential in-

formants are generally exempt. See MCLA § 15.243(1)(b)(iv) and MCLA § 15.243(1)(s)(i).

The FOIA does not create any prohibition against the release of file photographs taken of criminal suspects by law enforcement officials. 1979-80 Op. Att’y Gen. 468, 470 (1979). However, while such photographs are public records under the FOIA, they may in some circumstances be exempt--as where a clearly unwarranted invasion of privacy may occur in the release of such photographs (MCLA § 15.243(1)(a)). Nevertheless, booking photos have been held not to be entitled to exemption from disclosure under the FOIA where the subject involved had been arrested, charged in open court and was awaiting trial. *Detroit Free Press v. Oakland County Sheriff*, 164 Mich. App. 656, 418 N.W. 2d 124 (1987).



AP PHOTO BY BOB MACDONNELL, THE HARTFORD COURANT

Universal health care protesters were handcuffed and arrested in front of the Conn. governor’s office in the State Capitol in 2007.

Minnesota

Open records law in Minnesota is primarily codified through the Minnesota Data Practices Act (“MGDPA”).

In regard to police-related records, access to public records is governed by the Section entitled “comprehensive law enforcement data.” § 13.82. Section 13.82 attempts to categorize specific actions and information that involve law enforcement functions and that would, in most cases, form the nucleus of official actions. For example, subdivision 2 of the section identifies public “arrest data.” Subdivision 3 requires that “request for service data,” or data documenting service requests by the public, be accessible. Subdivision 4 allows access to “response or incident data,” which document action taken by the law enforcement agency.

There is no specific provision that deals with accident reports. Since accidents would normally fall within arrest data or response to incident data, and since response or incident data include “responses to traffic accidents,” data contained on accident reports would generally be public. § 13.82, subd. 4.

“Police blotter” data are not separately identified in the Act. To the extent that a “police blotter” would include arrest data, such as agency action, resistance encountered, charge or other legal basis for the action, identity and place of custody of arrestee, it would be public.

Generally, audio recordings of 911 telephone calls are not public. A written transcript is available upon request. § 13.82, subd. 4.

Section 13.82, subd. 7 protects “investigative data” collected to prepare a case against a person as confidential, as long as

the investigation is active. Subdivision 7 also allows any person to bring action to compel access to investigative data.

“Inactive investigative data” are public. Along with the expiration of formal time periods, an investigation becomes inactive when the agency decides “not to pursue the case.” § 13.82, subd. 7.

Section 13.82, subd. 2 identifies “arrest data” that are public. Such data include the actions of the agency, such as resistance encountered or pursuit, the charge, arrest, warrants or other legal basis for the action, the identity of the person arrested or cited and all matters relating to the custody of that person.

Criminal histories, or “rap sheets,” have, as a matter of practice, always been available either with respect to an arrested person or generally from the Bureau of Apprehension (BCA). Section 13.87 specifies the criminal history data that are available from the BCA.

Section 13.82 has specific subdivisions protecting the identity of victims of child abuse or neglect or vulnerable adult maltreatment from disclosure. Section 13.82 also protects the identities of victims of criminal sexual conduct, child abuse and vulnerable adults. Subdivision 17 also protects those other victims or witnesses who have requested that they not be identified.

There is no specific provision within § 13.82 that deals with access to “statements” or “confessions.” If the statement is given at or about the time of arrest and is documented as a part of the initial report on the incident, it would likely be public under § 13.82, subd.

2 and 6. If the statement or confession was collected while the investigation was active, it would probably be protected from disclosure. § 13.82, subd. 7.

Section 13.82, subd. 17(c) protects the identity of informants “if the agency reasonably determines that revealing the identity of the informant would threaten the personal safety of the informant.”

Section 13.82, subd. 25 indicates that “deliberative processes or investigative techniques of law enforcement agencies are confidential.”

Booking photographs, meaning the “image” taken by law enforcement officials to identify someone in connection with their arrest, are public. § 13.82, subd. 26.

Mississippi

As per the state’s Public Records Act, police records are generally permitted to be closed by law, but frequently open in practice. See § 45-29-1. Accident reports are open.

Access to police blotter information, 911 tapes, and confessions depends on the contents of the report, and whether any of the material is subject to other exemptions.

Criminal case files and records related to those cases are generally exempt from the act. Op. Att’y Gen. March 2, 2001 to Carter.

Arrest records are open.

Records that may identify victims are still open, if they are not investigatory record.

Records that would reveal confidential informants may be closed.

Records revealing police techniques may be closed. See Op. Att’y Gen. Sept. 7,



1995 to Jerry A. Evans (policy on vehicle searches).

Mug shots are generally open.

Missouri

Open records law in Missouri is primarily codified through the Sunshine Law, Mo. Rev. Stat. §§ 610.010-.035, Arrest Records Law, Mo. Rev. Stat. §§ 610.100-.126, and the Public Records Law, Mo. Rev. Stat. §§ 109.180-.190.

Certain information regarding accident reports may be available if maintained on a law enforcement agency's daily log. Mo. Rev. Stat. § 300.125.

Local law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints are required to make certain limited information available to the public, including the time, substance and location of all complaints or requests for assistance and information relating to the underlying occurrence. Mo. Rev. Stat. § 610.200.

911 tapes are inaccessible to the general public. Mo. Rev. Stat. § 610.150.

Investigation reports are closed records until the investigation becomes "inactive." Mo. Rev. Stat. § 610.100.2. The term "inactive" is defined to include a decision by a law enforcement agency not to pursue a case, the expiration of the applicable statute of limitations, or the finality of convictions and exhaustion of all appeals. Mo. Rev. Stat. § 610.100.1(3).

All arrest reports and incident reports are public records. Mo. Rev. Stat. § 610.100.2. However, if a person who is arrested is not charged with an offense within thirty days, or if the charge is dismissed or the person is found not guilty, official records of the arrest and of any confinement incidental to that arrest become closed records.

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person." Mo. Rev. Stat. § 610.100.3.

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain in-

formation that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person." Mo. Rev. Stat. § 610.100.3.

Montana

As mandated through a state constitutional provision and open records statutes, police records including accident reports, police blotters, 911 tapes, and initial arrest records are all public criminal justice information. See *Barr v. Great Falls Intern. Airport Authority*, 326 Mont. 93, 107 P.3d 471 (2005) (holding arrest record from Alaska contained in national computer database was public criminal justice information). For arrest records, also see *Barr v. Great Falls Intern. Airport Authority*, 326 Mont. 93, 107 P.3d 471 (2005) (holding arrest record from Alaska contained in national computer database was public criminal justice information).

Investigative records, active and closed, computation of criminal histories, confessions, confidential informants, and police techniques are all confidential criminal justice information subject to the balancing test. See also Montana Criminal Justice Information Act of 1979, Mont. Code Ann. §§ 44-5-101 to -515 (1987); *Engrav v. Cragun*, 769 P.2d 1224 (1989); 42 A.G. Op. 119 (1988).

Nebraska

As codified within Nebraska Revised Statutes, accident reports appear to be available for inspection in the absence of a specific exemption stating otherwise.

Police blotter information was specifically made public record by Neb. Rev. Stat. § 29-3521(2) (Reissue 1995).

Copies of 911 tapes are occasionally withheld, although there is no statutory authority for such withholding. Some law enforcement agencies take the position that all tapes are investigatory records.

"Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training" are exempt from disclosure. The public records law does not distinguish between active and closed files.

Arrest records are available for public inspection as a part of criminal history information, notwithstanding the language of the exception for investigatory records. See Neb. Rev. Stat. §§ 29-3506; 29-3520 (Reissue 1995).

Compilations of criminal histories are public records. Neb. Rev. Stat. § 29-3520

(Reissue 1995).

No specific statutory provision addresses records that identify victims, confidential informants, or police techniques. To the extent that such information is part of law enforcement investigatory files, it may be withheld from disclosure.

Confessions admitted in evidence at a court hearing closed to the public pursuant to Nebraska Supreme Court guidelines may be sealed.

Mug shots are public records. Neb. Rev. Stat. § 29-3521(1) (Reissue 1995).

Nevada

Active investigation records are not specifically closed by statute, but the balancing test set forth in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990), generally weighs in favor of closure. Inactive investigation records are more likely to be considered open under the balancing test.

Compilations of criminal histories are closed to the general public, but must be disclosed to any "reporter for the electronic or printed media in his professional capacity for communication to the public." N.R.S. 179A.100(5)(l).

Records such as accident reports, police blotters, 911 tapes, arrest records, confessions, mug shots are presumably open. Records identifying victims are presumably open but some police agencies are slow to release victim information.

Records that would identify confidential informants may be closed. Protecting confidential sources is specifically listed as a balancing test factor in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).

Records revealing police techniques may be closed. Protecting confidential police techniques is specifically listed as a balancing test factor in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990).

New Hampshire

The New Hampshire "right to know" law is contained within RSA Ch. 91-A, as amended, and is entitled "Access to Public Records and Meetings" (hereinafter "Statute").

The status of investigatory records is controlled by the law enforcement records of the Federal FOIA, 5 U.S.C. Sec. 552(b)(7), adopted by *Lodge v. Knowlton*, 118 N.H. 574 (1978), meaning that they are presumably open unless they interfere with investigations or invade personal privacy.

Arrest records, by custom and practice, are considered public, unless the government can establish an exemption under *Lodge v. Knowlton*, 118 N.H. 574 (1978).

The statute does not explicitly cover accident reports or police blotters, but the

general practice is that these records are public.

There are no reported decisions involving 911 tapes, identities of victims, confessions, confidential informants, police techniques or mug shots.

The status of criminal history record information is governed by the State Security and Privacy Plan.

New Jersey

As per the state's Open Public Records Act ("OPRA"), accident reports are public records under N.J.S.A. 39:4-131.

The Appellate Division has held that a 911 tape was a government record, did not constitute a criminal investigatory record and was thus accessible, but noted that the decision was based on the particular circumstances in the case. *Serrano v. South Brunswick Tp.*, 358 N.J. Super. 352 (App. Div. 2003).

N.J.S.A. 47:1a-1.1 exempts from the definition of government record and thus from access criminal investigatory records which are defined as a record not required by law to be made, maintained or kept on file that is held by a law enforcement agency pertaining to any criminal investigation or related civil enforcement proceeding.

Criminal investigatory records are generally confidential and only information regarding the type of crime, time, location and type of weapon may be released. In the case of a closed investigation, while the records are not statutory public records, police reports and internal police records are considered common law public records which may be subject to disclosure following an *in camera* review and balancing of interests by the court. See *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 610 A.2d 985 (App. Div. 1992); *Asbury Park Press Inc. v. Borough of Seaside Heights*, 246 N.J. Super. 62, 586 A.2d 870 (Law Div. 1990).

When an arrest is made the public is entitled to the suspect's name, age, residence, occupation, marital status, the charges, the amount of bail and the circumstances surrounding arrest, but not to prior arrest record. N.J.S.A. 47:1A-4.

Access to the State Criminal History Record Information File is limited to specifically authorized agencies. N.J.A.C. 13:59-1.1.



AP PHOTO BY COREY S. KRASKO, THE SOUTHWEST TIMES RECORD

Two Arkansas state troopers look over an accident reconstruction sketch in 2008. Another trooper was killed in the accident.

If an arrest has been made, information as to the name, address and age of any victim is required to be released unless the victim's family has not been notified or if release of the information would jeopardize the victim's safety or impair an on-going investigation. N.J.S.A. 47:1A-4.

Information regarding a confession is a confidential criminal investigation record until utilized in court proceedings or until the investigation is closed.

Information regarding a confidential informant generally is privileged unless otherwise ordered by a court. See N.J.S.A. 2A:64A-28; *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 610 A.2d 985 (App. Div. 1992).

N.J.S.A. 47:1A-1 exempts from the definition of a government record security measures and surveillance techniques which, if disclosed, would create a risk to the safety of person's property.

Police photographs and mug shots are exempt from disclosure under Kean Executive Order No. 123 (1985) and thus exempt under OPRA.

New Mexico

As per the state's Inspection of Public Records Act, accident reports are open. § 29-10-7(5), NMSA 1978.

Police blotters are open; § 29-10-7(2), NMSA 1978.

911 tapes are open, pursuant to the At-

torney General's Compliance Guide and unpublished court decisions.

Investigatory records are confidential if the records reveal confidential sources, methods, information or individuals accused but not charged with a crime, without regard to whether the investigation is active or closed. § 14-2-1(D), NMSA 1978.

Arrest records are open; see generally § 29-10-7 and § 14-2-1(D), NMSA 1978.

Compilations of criminal histories are presumably open; see generally § 29-10-7 and § 14-2-1(D), NMSA 1978.

Records that would identify victims are generally open, but subject to closure if disclosure reveals confidential sources, methods or information that would seriously interfere with the effectiveness of an investigation.

Records of confessions are not clearly open; there is no precedent available.

Records that would reveal confidential informants are not public; § 14-2-1(D), NMSA 1978.

Records containing police techniques are not public if disclosure would reveal a confidential method; § 14-2-1(D), NMSA 1978.

Mug shots are open; see generally § 29-10-7 and § 14-2-6(E), NMSA 1978.

New York

Open records law in New York derives from the state's Freedom of Information Law ("FOIL").



Leather-bound books of “police activity logs” in which police officers recorded all of their work-related activities are agency records subject to disclosure under FOIL, even though officers themselves maintained physical possession of the activity logs. *Gould v. New York City Police Dep’t*, 89 N.Y.2d 267, 653 N.Y.S.2d 54 (1996).

Accident reports are open, but names and addresses of accident victims can be deleted on privacy grounds.

Police blotters are presumably open.

The Committee on Open Government has expressed the opinion that 911 tapes can be viewed as records compiled in the ordinary course of business and as such, should generally be subject to disclosure. Comm. Open Gov’t, FOIL-AO-3734(1985); FOIL-AO-3540 (1984).

An agency may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings. N.Y. Pub. Off. Law § 87(2)(e)(i) (McKinney 1988).

Arrest records are generally open.

The FOIL does not directly exempt from disclosure compilations of criminal histories. The New York State Division of Criminal Justice Services, which compiles criminal histories, is governed by a statutory directive to adopt measures to assure the security and privacy of identification and information data in its possession. N.Y. Exec. Law § 837(8) (McKinney 1982). The division has relied upon this statutory provision to promulgate regulations exempting information in its criminal history files from disclosure on the basis that disclosure would result in an unwarranted invasion of personal privacy. 9 N.Y.C.R.R. 6150.4(b)(6) (1978).

Convictions records are available under FOIL. See *Geames v. Henry*, 173 A.D.2d 825, 572 N.Y.S.2d 635 (2d Dep’t 1991).

Records including victim information are generally open; one court rejected a sheriff’s practice of withholding reports of offenses when the person reporting the offense indicated a preference that the incident not be released to media. *Johnson Newspaper Corp. v. Call*, 115 A.D.2d 335, 495 N.Y.S.2d 813 (4th Dep’t 1985)

An agency may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would identify a confidential source or disclose confidential information relating to criminal investigations. N.Y. Pub. Off. Law § 87(2)(e)(iii) (McKinney 1988).

An agency may deny access to records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would reveal criminal investigative techniques or procedures, except routine techniques and procedures. N.Y. Pub. Off. Law § 87(2)(e)(iv) (McKinney Supp. 1988).

There are no cases on whether mug shots must be made available.

North Carolina

Section 132-1.4 of the General Statutes governs criminal investigations and intelligence information records, which generally are not public records. Certain information, however, *is* public, including the time, date, location, and nature of an apparent violation of the law; the name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted; the circumstances surrounding an arrest; and the contents of “911” calls, except for information that would identify the caller. G.S. § 132-1.4.

Motor vehicle accident reports are public records and are routinely available from the Division of Motor Vehicles. G.S. § 20-166.1.

There is no requirement that law enforcement keep a “police blotter” or “log.” The Public Records Law does not contain any exclusion or exemption for such documents.

Many details from arrest records are public information. G.S. § 132-1.4(c). The public records law expressly provides that absent a court order sealing them, the following records are public: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders. G.S. § 132-1.4(k).

Criminal histories as reflected in the records maintained in the offices of the various clerks of court are public records. G.S. 7A-109(a) specifically states that records maintained by clerks of court are open to public inspection. By contrast, criminal history records stored in the computerized Police Information Network (PIN) are not open to public inspection.

Names of victims and complaining witnesses disclosed in arrest documents, charges, indictments, applications for search warrants and similar documents are matters of public record. G.S. § 132-1.4(c)(6).

The public records law does not con-

tain any provision specifically relating to confessions. Ordinarily, the existence of a confession becomes a matter of public record when it is the subject of a pre-trial suppression hearing or when it is offered in evidence at trial.

The public records law provides that information pertaining to confidential informants is within the definition of “records of criminal investigations,” which are not public records. G.S. § 132-1.4(b).

The public records law does not address the status of documents disclosing “police techniques.” However, it is anticipated that the Attorney General would take the position that information concerning law enforcement techniques is part and parcel of the law enforcement agency’s “investigative files,” and thus is not a matter of public record.

Mug shots are not explicitly treated under the public records law. Photographs are included within the definition of public records, but they are also included within the definition of records of criminal investigations, which would make them exempt from disclosure. In practice, many law enforcement agencies routinely release mug shots.

North Dakota

North Dakota Century Code § 44-04-18.7 provides that “active criminal intelligence information and active criminal investigative information” are exempt from the open records law. Such information does not include: the arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee; facts concerning the arrest, including the cause of arrest and the name of the arresting officer; conviction information; disposition of all warrants; a chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; a crime summary; radio log; and general registers, including jail booking information.

Accident reports and police blotters are open under N.D.C.C. § 44-04-18.7.

Names, addresses, and telephone numbers that must be provided to a 911 public service answering point under N.D.C.C. § 57-40.6-06, may be used only for verifying the location or identity, or both, for response purposes only, of a person calling a 911 answering point for emergency help. N.D.C.C. § 57-40.6-07.

Criminal intelligence and investigative information that is not considered “active” can be closed to the extent that the information is personal information. When an investigation is inactive with no expectation that it will recommence, there is no ongoing investigation and information regarding the

investigation is open to the public. N.D.C.C. § 44-04-18.7.

The state law does not specifically address whether records including victim information, confessions, confidential informants, or police techniques are open.

Mug shots are open under N.D.C.C. § 44-04-18.7.

Ohio

Routine incident reports are not exempt. *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

“Nine-one-one tapes in general . . . are public records which are not exempt from disclosure and must be immediately released upon request.” *State, ex rel. Cincinnati Enquirer v. Hamilton County*, 75 Ohio St. 3d 374, 662 N.E.2d 334 (1996).

Ohio law makes no distinction between active and inactive or closed investigations, and the exemption applies even where authorities have decided not to file charges. *State ex rel. Thompson Newspapers Inc. v. Martin*, 47 Ohio St. 3d 28, 546 N.E.2d 939 (1989); *State ex rel. Polovischak v. Mayfield*, 50 Ohio St. 3d 51, 552 N.E.2d 635 (1990).

However, investigatory records may lose exemption status after an investigation leads to a prosecution, and all appeals and post-conviction relief are exhausted. See *State ex rel. Steckman v. Jackson*, 70 Ohio St. 3d 420, 639 N.E.2d 83 (1994).

Arrest records are open. *State ex rel. Outlet Communications Inc. v. Lancaster Police Dept.*, 38 Ohio St. 3d 324, 528 N.E.2d 175 (1988).

Criminal histories compiled by the Federal Bureau of Investigation or by the Ohio Bureau of Criminal Identification and Investigation are not available to the public. 42 U.S.C. § 3789g; Ohio Rev. Code § 109.57.

Arrest histories compiled by local governments are public records. *State ex rel. Lippitt v. Kovacic*, 70 Ohio App. 3d 525, 591 N.E.2d 422 (1991).

Information about victims possessed by the police department is not exempt. *Pinkava v. Corrigan*, 64 Ohio App. 3d 499, 581 N.E.2d 1181 (1990).

Confessions are not exempt per se, but can be withheld to protect the defendant’s constitutional right to a fair trial. *State ex rel. Vindicator Printing Co. v. Watkins*, 66 Ohio St. 3d 129, 609 N.E.2d 551 (1993).

The identities of confidential informants is exempt where promises of confidentiality are reasonable. Ohio Rev. Code §§ 149.43(A)(2)(a), (A)(2)(b).

Confidential, non-routine police investigative techniques are exempt. Ohio Rev. Code § 149.43 (A)(2)(c).

Mug shots are not exempt.

Oklahoma

A chronological list of all traffic accidents, including date, time and general location of incident as well as the name of the officer and a brief summary of what occurred is public information. 51 Okla. Stat. Supp. 2005, § 24A.8.A.5. However, collision reports are not public records under the act.

Jail blotter or booking information is open. 51 Okla. Stat. Supp. 2005, § 24A.8.A.8.

While not specifically addressed, 911 tapes would appear to fall under records of public calls recorded or radio logs. 51 Okla. Stat. Supp. 2005, §§ 24A.8.6 and 7.

Investigatory records of the attorney general, county and municipal attorneys are confidential except as required by law to be made public. 51 Okla. Stat. 2001, § 24A.12. Investigatory files are not listed among the files which must be released by law enforcement agencies and thus are presumptively closed unless required by law to be made public or where a court finds that the public interest or the interest of an individual outweighs the reason for denial. 51 Okla. Stat. Supp. 2005, § 24A.8.B. See also 1999 Okla. Op. Att’y Gen. 58. However, a public record cannot be removed from the public domain by placing it in an investigatory file. 51 Okla. Stat. 2001 § 24A.20.

A description of arrestees and facts concerning arrests are open. 51 Okla. Stat. Supp. 2005 §§ 24A.8.A.1, 2, 5, 6.

Names of persons convicted of criminal offenses are public. 51 Okla. Stat. Supp. 2005 § 24A.8.A.3.

Upon the request of a victim or the district attorney, the court may order the victim’s personal information kept confidential if necessary to protect the victim or victim’s immediate family and if the information is not necessary to a defense. 22 Okla. Stat. 2001 § 984.2.

Confessions have not been specifically exempted by statute.

No specific statutory authority protects a confidential informer unless the informer objects to the release of information and the agency makes a good faith finding that its release could be damaging to the objecting individual. 1986 Okla. Op. Att’y Gen. 39; see also 12 Okla. Stat. 1991, § 2510.

Oklahoma law does not address whether police techniques and mug shots are open.

Oregon

Disclosure of arrest information or a report of a crime may be delayed if a clear need is shown, including protection of the victim or complaining party. O.R.S. 192.501(3).

Accident reports and police blotters are subject to disclosure.

911 tapes are subject to disclosure (if investigatory material is included, dis-

closure might be withheld under ORS 192.501(3)).

Investigatory records may be exempt under ORS 192.501(3). Arrest records are generally subject to disclosure. ORS 192.501(3).

Compilations of criminal histories may be available under special circumstances pursuant to ORS 181.540; specifically ORS 181.540(b) concerning computerized criminal offender information, which allows some public availability under rules adopted by the state police.

The name of a crime victim is subject to disclosure. ORS 192.501(3)(d). Criminal victim compensation records are not subject to disclosure, under ORS 147.115.

Under ORS 192.501(3), confessions are not available from law enforcement agencies as investigatory records until evidence of the confession has been submitted in a judicial proceeding or the confession is voluntarily disclosed by the agency. However, his information may be sought under Oregon’s open courts constitutional provision, Article I, section 10.

Confidential informant information generally is not subject to disclosure. See ORS 192.502(3) and ORS 192.501(3).

Investigatory information compiled for criminal law purposes is generally exempt. ORS § 192.501.

Mug shots are open, subject to ORS 192.501(3).

Pennsylvania

Police records are generally unavailable if they fall within the “investigation exception” of the Right to Know Act. However, there are some circumstances where records may be available.

Accident reports are open, at least so long as they do not serve as a confidential basis for further action. *City of Philadelphia v. Ruczynski*, 24 Pa. D.&C.2d 478 (Phila. Cty. C.P. 1961).

Police blotters specifically have been held to be “public” records, but the request must be directed to the proper custodian. See *Commonwealth v. Mines*, 680 A.2d 1227 (Pa. Cmwlth. 1996); *Lebanon News Publ’g Co. v. City of Lebanon*, 451 A.2d 266 (Pa. Cmwlth. 1982). Whether they would be subject to any exception in the law must be determined on a case-by-case basis. Police incident reports are also public records under the act. *Tapco Inc. v. Township of Neville*, 695 A.2d 460, 465 (Pa. Cmwlth. 1997).

911 tapes may not be “public records” under the act if they do not fulfill the requirement that they form the basis for an agency’s decision. See *North Hills News Record v. Town of McCandless*, 722 A.2d 1037 (Pa. 1999).

Investigatory records are non-public under the act. The Act does not distinguish



between active and closed investigatory files.

Arrest records must be disclosed on request, for a fee, to individuals, after certain specified "outdated" information, such as arrests when there has been no disposition after 18 months, has been expunged. 18 Pa. Cons. Stat. § 9122.

State police regulations and policy statements regarding the responsibilities of bureaus and divisions and regarding the use of deadly force do not fall within the investigation exception and thus are accessible to the public.

Rhode Island

Open records law in Rhode Island derives from the state's Access to Public Records Act ("APRA"). R.I. Gen. Laws §§ 38-2-1 *et seq.*

Records for criminal law enforcement are generally excluded from disclosure by Exemption (D) to the extent that disclosure could interfere with criminal investigations or enforcement proceedings, would deprive a person of a fair trial or impartial proceedings, could reasonably be expected to disclose a confidential source, would disclose investigation or prosecution techniques or procedures, or could endanger the life or safety of an individual. R.I. Gen. Laws § 38-2-2(4)(i)(D).

Accident reports are presumably open; there is no specific exemption.

Any records reflecting the initial arrest and any complaint against an adult filed in court by a law enforcement agency are expressly not exempt pursuant to Exemption (D). *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

All telephone calls and all tapes shall remain confidential and be used only for the purpose of handling emergency calls and public safety. *See* R.I. Gen. Laws §§ 39-21.1-17.

Records relating to investigations of crimes are exempt only to the extent that the disclosure could interfere with criminal investigation or enforcement proceedings, would deprive a person of a fair trial or impartial adjudication, could reasonably be expected to constitute a unwarranted invasion of personal privacy, could reasonably be expected to disclose the identity of

a confidential source or the information furnished by such a source, would disclose investigation or prosecution techniques or procedures or law enforcement guidelines, or could reasonably be expected to endanger the life or safety of an individual. R.I. Gen. Laws § 38-2-2(4)(i)(D).

Adult initial arrest records are public. *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Compilations of criminal histories are presumably open, subject to qualifications as set forth in Exemption (D); no specific exemption. *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Records identifying victims are open, subject to qualification as set forth in Exemption (D). *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Confessions are open, subject to qualification as set forth in Exemption (D). *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Records that could reasonably be expected to disclose a confidential source are exempt from disclosure pursuant to Exemption (D). *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

Records that would disclose investigation or prosecution techniques are exempt from disclosure pursuant to Exemption (D). *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

There is no provision regarding mug shots; they are presumably open subject to the above stated restrictions. *See* R.I. Gen. Laws § 38-2-2(4)(i)(D).

South Carolina

Automobile accident reports are public, but may not be used for commercial solicitation. S.C. Code Ann. § 56-5-1275.

Police reports that disclose the nature, substance and location of any crime or alleged crime reported as having been committed are public. S.C. Code Ann. § 30-4-50(A)(8).

911 tapes are available under the definition of public records, which includes "tapes." S.C. Code Ann. § 30-4-20(c).

Active investigative records may be sheltered from disclosure if the public disclosure of the records would interfere with a prospective law enforcement action. S.C. Code Ann. § 30-4-40(a)(3); *Turner v. North Charleston Police Dept.*, 351 S.E.2d 583 (S.C. App. 1984). The Supreme Court has rejected the argument that such records, even when the investigation is closed, can be automatically exempt; instead, each report must be examined to determine if portions are subject to the mandatory disclosure requirements of the act. *Newberry Observer v. Newberry County Comm'n. on Alcohol and Drug Abuse*, 417 S.E.2d 870, 20 Media L. Rep. 1420 (S.C. 1992).

Arrest records are subject to disclosure.

Criminal histories are available from the South Carolina Law Enforcement Division. S.C. Ann. § 23-3-130.

Information regarding victims of crime

may be redacted from police reports if the release of the information would endanger the life, health or property of any person. S.C. Code Ann. § 30-4-40(a)(3)(D).

There is no specific exemption regarding confessions, but a law enforcement agency may claim that premature release would interfere with a prospective law enforcement action. S.C. Code Ann. § 30-4-40(a)(3).

The identity of confidential informants not otherwise known is sheltered from mandatory disclosure. S.C. Code Ann. § 30-4-40(a)(3).

Investigative techniques not known outside the government are not subject to mandatory disclosure. S.C. Code Ann. § 30-4-40(a)(3).

There is no specific exemption for mug shots, and they would be available unless the premature release would interfere with a prospective law enforcement action. S.C. Code Ann. § 30-4-30(a)(3).

South Dakota

Accident reports are open. S.D.C.L. §§ 32-34-13, 13.1.

Police blotters are traditionally open. *See* S.D.C.L. § 9-18-2 regarding records of municipal officers generally.

It is not clear whether 911 tapes are required to be open.

Investigatory records are closed, whether active or inactive. S.D.C.L. § 23-5-10.

Arrest records are open in practice. *Also see* S.D.C.L. § 9-18-2 regarding records of municipal officers generally.

Compilations of criminal histories are closed. S.D.C.L. § 23-6-14.

Records that include victim information are generally open, but victims in sex-crimes can suppress their names until an arraignment. S.D.C.L. § 23A-6-22.

Confessions are presumably closed during the investigative stage.

It is uncertain whether records identifying confidential informants are open, but *see* S.D.C.L. § 23A-35-4.1 regarding the temporary sealing of an affidavit in support of a search warrant.

Access to mug shots is restricted. S.D.C.L. § 23-5-7.

Tennessee

As per the state's Public Records Act, accident reports are generally open. T.C.A. § 55-10-108.

Police blotters are presumably open. 911 tapes are presumably open. *See* Op. Att'y Gen. No. 93-65 (Nov. 29, 1993).

Investigatory records are closed. Tenn. R. Crim. P. 16. The state high court has ruled that closed investigative files not relevant to pending or contemplated criminal action are not excepted by Rule 16.

Arrest records are presumably open,

and compilations of criminal histories are presumably open.

Records identifying victims are presumably open.

Confessions are presumably open, if not part of an active investigatory file.

Mug shots, records identifying confidential informants, or records describing police techniques are presumably open unless contained in an active investigation file.

Texas

Accident reports revealing the date of the accident, the persons involved, and its location along with towing records and 911 call records are privileged and confidential. Tex. Gov't Code Ann. § 550.065.

Police dispatch reports are public information that must be released. *City of Lubbock v. Cornyn*, 993 S.W.2d 461, 465-66 (Tex. App.-Austin 1999, no pet.).

The police "blotter," "showup sheet," and arrest sheet are not exempt from disclosure while the offense report, arrest record, and personal history are exempt. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975).

Tape recordings of calls made to 911 constitute public information. Tex. Att'y Gen. ORD-519 (1989). Such records are subject to public disclosure even if they are held by a "911 network district" established under the Emergency Communication District Act. Tex. Health & Safety Code Ann. §§ 772.201-772.300 (formerly Tex. Rev. Civ. Stat. Ann. art. 1432d); Tex. Att'y Gen. ORD-519 (1989).

The act specifically exempts records dealing with law enforcement agency investigations. § 552.108. This exception generally covers offense reports and personal history and arrest records maintained for internal use. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975, writ ref'd n.r.e.); Op. Tex. Att'y Gen. No. OR94-142 (1994). Section 552.108(a)(1) of the act exempts information and internal records held by a law enforcement agency relating to an active investigation. Specifically, information that would interfere with the detection, investigation or prosecution of a crime.

Section 552.108(a)(2) of the act exempts from disclosure information concerning an investigation that concluded in a result other than a conviction or a deferred adjudication.

"Arrest sheets" containing an arrestee's name, race, age, place of arrest, names of arresting officers and offense for which suspect is arrested are required to be released. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 at 179-80, 188.

The Texas attorney general has noted that

"as a rule, . . . the names of complainants are public information. . . . Only in unusual instances, such as where the complainant was the victim of a sexual assault may the identity of a complainant be withheld." Tex. Att'y Gen. ORD-482 (1987).

A synopsis of a reported confession generally is exempt. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.-Houston [14th Dist.] 1975).

Generally the identity of confidential informants is exempt. See *Houston Chronicle Publ'g Co.*, 531 S.W.2d at 187.

Internal law enforcement detection and investigation methods are generally exempt under section 552.108. *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977).

In cases that are still under active investigation, section 552.108 exempts mug shots from disclosure. Op. Tex. Att'y Gen. No. OR94-087 (1994). Several attorney general decisions have concluded that when the mug shot was taken in connection with an arrest for which the arrestee was subsequently convicted and the case is closed, information may be withheld only if its release will unduly interfere with law enforcement or crime prevention. Tex. Att'y Gen. ORD-616 (1993).

Utah

Automobile and watercraft accident reports prepared by operators of vehicles involved in an accident, by witnesses to an accident, or by police officers investigating an accident, may be disclosed to certain groups and individuals, including the news media. Utah Code Ann. §§ 41-6-40(3)(a), 73-18-13(3) (2004). Information provided to the press or member of the broadcast news media, however, may only include the name, age, sex and city of residence of each person involved in the accident, the make and model year of each vehicle involved in the accident, whether each person involved in the accident had insurance coverage, the location of the accident, and a description of the accident. Utah Code Ann. § 41-6-40(3)(d) (2004).

The chronological logs and initial contact reports of law enforcement agencies are generally public records. Utah Code Ann. § 63-2-301(2)(g) (2004).

The state high court in *Fox Television Stations Inc. v. Clary* held that two tape recordings of 911 telephone calls placed by a woman as she was being shot by her estranged husband were public records and ordered the Sheriff's Department to release complete, unredacted copies of the 911 tapes. *Id.* The court concluded that the interests favoring restriction of access, if any, did not clearly outweigh the interests favoring access. Since no other statutory or constitutional exemptions applied, the 911

tapes were presumed public.

Access to investigatory records may be restricted if release of such records (1) reasonably could be expected to interfere with the investigation; (2) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings; (3) would create a danger of depriving a person of a right to a fair trial or impartial hearing; (4) reasonably could be expected to disclose the identity of a confidential source; or (5) reasonably could be expected to disclose confidential investigative or audit techniques. Utah Code Ann. § 63-2-304(9) (1997).

Arrest warrants after issuance are public records; however, a court may restrict access to the warrant prior to service. Utah Code Ann. § 63-2-301(2)(m) (2004).

Criminal history records and warrant arrest information are available to criminal justice agencies and some noncriminal justice agencies and individuals for specific purposes. The information "may only be used for the purposes for which it was provided and may not be further disseminated." Utah Code Ann. § 53-10-108 (2004).

Victim names are presumed public, although access may be restricted if release would constitute a clearly unwarranted invasion of personal privacy. See Utah Code Ann. §§ 63-2-103(13)(a)(ii) (1997), 63-2-301(2)(g), 63-2-302(2)(d) (2004).

There appears to be no Utah statute governing access to confessions, although law enforcement agencies may withhold confessions if release would interfere with an on-going investigation. See Utah Code Ann. § 63-2-304(9)(a) (2004).

Records that reasonably could be expected to disclose a confidential police informant are protected from public disclosure. Utah Code Ann. § 63-2-304(9)(d) (2004).

Records that reasonably could be expected to disclose investigative techniques not generally known outside of government are protected from public disclosure. Utah Code Ann. § 63-2-304(9)(e) (2004).

A jail booking photograph is a record under GRAMA. See *KSL-TV v. Juab County Sheriff's Office*, No. 98-01 (Utah State Rec. Comm. Feb. 20, 1998) (citing Utah Code Ann. § 63-2-103(18)). Because such records are not specifically exempted under GRAMA, these records are presumed public. See *id.* (citing Utah Code Ann. § 63-2-201(2) (2004)).

Vermont

Open records law in Vermont is codified at 1 V.S.A. §§ 315-320.

Accident reports, police blotters and arrest records are open.

911 tapes are presumed open, unless they are part of an investigation.

Investigatory records in active investi-



gations are closed; but records in closed investigations are presumed open.

Compilations of criminal histories are presumed open, to the extent comprised of past convictions.

Records identifying victims are presumed open, unless minors are involved.

Confessions are closed if part of an investigation.

Records identifying confidential informants are presumed closed.

Records revealing police techniques are open if related to the management and direction of law enforcement, but closed if part of an ongoing investigation or if release would compromise public safety.

Mug shots are presumed open.

Virginia

Accident reports held by the Department of Motor Vehicles must be released to persons involved in the accident, or their representatives, attorneys or insurance carriers. Va. Code Ann. § 46.2-380.

The act only compels the release of "criminal incident information" in felony cases. "Criminal incident information" is defined as "a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen. Va. Code Ann. § 2.2-3706.(A), (B).

911 tapes qualify as public records and as non-criminal incident information. See *Tull v. Brown*, 255 Va. 177, 494 S.E.2d 855 (1998).

Section 15.2-1722(A) identifies certain personnel, arrest, investigative, and incident records held by sheriffs and chiefs of police. Such records previously were exempt from the act, but in 1999, the General Assembly deleted the language exempting these records.

Documents relating to a closed police investigation of possible misconduct by a named public official were held exempt from disclosure on the grounds that they were personnel records, pursuant to § 2.2-3705.1(1) (formerly § 2.2-3704(B)(3)), by a trial court of Virginia. *Moore v. Maroney*, 258 Va. 21, 27, 516 S.E.2d 9, 13 (1999).

Investigative information need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2. Va. Code Ann. § 2.2-3706(D).

Chronologically listed records of completed arrests must be disclosed. 1977-1978 Va. Op. Atty. Gen. 486 (January 13, 1978).

Criminal history records shall be disseminated only to the individuals or groups listed in Va. Code Ann. § 19.2-389.

The identity of a victim may be disclosed unless prohibited by § 19.2-11.2, or by another section. Va. Code Ann. § 2.2-3706(D). Victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses may be withheld. Va. Code Ann. § 2.2-3705.2(1).

Confessions are not addressed directly, but are often characterized as "evidence" not subject to disclosure by prosecutors and law enforcement agencies.

Records that would identify anonymous informants need not be disclosed. Va. Code Ann. § 2.2-3706(F)(4).

Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety and security of law enforcement personnel or the general public may be withheld. Va. Code Ann. § 2.2-3705.2(4).

Adult arrestee photos are excluded from disclosure to the extent necessary to avoid jeopardizing an ongoing investigation in a felony case. Va. Code Ann. § 2.2-3706(F)(2).

Washington

Accident reports are normally not available as public records. RCW 46.52.080. *Guillen v. Pierce County*, 144 Wn.2d 696, 31 P.3d 628 (2001).

The police blotter, jail register and incident reports are generally available prior to case closure. However, the Public Records Act seals law enforcement records if nondisclosure "is essential to effective law enforcement or for the protection of any person's right to privacy." RCW 42.17.310(1)(d) (recodified as RCW 42.56.240(1), eff. 7/1/06).

The CRPA provides that records of convictions, other formal dispositions adverse to the subject and records of those currently in the criminal justice system (including those on parole) "may be disseminated without restriction." Records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are complete are closed to the public. RCW 10.97.050.

911 tapes are available to the extent not covered by the investigative records exemption. See RCW 42.17.310(1)(d) (recodified as RCW 42.56.240(1), eff. 7/1/06).

Specific investigative records, the non-disclosure of which is essential to law enforcement or to protect a person's right to privacy, are exempt from disclosure. RCW 42.17.310(1)(d) (2000). Once the investigation is complete, the records are open. *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

The CRPA restricts access to pre-conviction and nonconviction records generally but not post-conviction records. Records of entry are accessible on a chronological basis, and records of those currently in the criminal justice system are not exempt. RCW 10.97.

The CRPA allows access to records of convictions and records of those currently in the criminal justice system; however, records on charges that have not resulted in conviction or other adverse disposition and for which formal proceedings are over are closed to the public. RCW 10.97.050.

The identity of witnesses, victims and people who file criminal or quasi-criminal complaints with agencies other than the Public Disclosure Commission is exempt if disclosure would endanger a person's life, property or physical safety, so long as the complainant indicates at the time of filing the complaint that the complainant desires it to be confidential. RCW 42.17.310(1)(e) (recodified as RCW 42.56.240(2), eff. 7/1/06).

There are no specific restrictions on access to confessions unless they fall within the investigative records exemption under the Public Records Act, RCW 42.17.310(1)(d) (recodified as RCW 42.56.240(1), eff. 7/1/06), or the CRPA. RCW 10.97.050.

Records identifying confidential informants may be exempt pursuant to RCW 42.17.310(1)(d) (recodified as RCW 42.56.240(1), eff. 7/1/06).

Requesters have generally been able to obtain copies of mug shots as public records, although police, prisons and jails often delay access. RCW 70.48.100.

West Virginia

Police records are generally open; the exemption applies only to (1) "information compiled as part of an inquiry into specific suspected violations of the law" and (2) internal records which reveal "confidential investigative techniques and procedures." Items such as mug shots, police blotters and 911 tapes normally would not meet these prerequisites for confidentiality, and thus should be subject to disclosure.

Records which are "generated pursuant to 'routine administration, surveillance or oversight'" are not exempt.

Various statutes contain more specific provisions governing access to certain types of law enforcement records. Accident reports

which are filed by law enforcement officers with the state Department of Motor Vehicles are available for public inspection at DMV, W. Va. Code § 17A-2-14; 51 Op. Att’y Gen. 556 (1965), and also should be available under the FOIA from the officers directly.

Active investigatory records are exempt from disclosure, W. Va. Code § 29B-1-4(4). However, the exemption should no longer apply once the investigation has concluded. Arrest records and compilations of criminal histories maintained by the Criminal Investigation Bureau of the state police are exempt from disclosure under the provisions of W. Va. Code § 15-2-24, which denies public access to “fingerprints, photographs, records or other information” maintained by the CIB.

There is no specific provision in the FOIA regarding access to such information as confessions, or the identities of victims and informants. The general test -- whether the information was “compiled as part of an inquiry into specific suspected violations of the law” or reveals “confidential investigative techniques and procedures” -- will determine whether such records are open to public inspection. This test does not apply to information concerning alleged crimes reported to security or other officials at colleges and universities.

Wisconsin

Motor vehicle accident reports are subject to public inspection. Wis. Stat. § 346.70(4)(f). *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991). Boating and snowmobile accident reports are open. Wis. Stat. § 30.67(4); 76 Wis. Op. Att’y Gen. 56 (Mar. 25, 1987).

Police blotters are subject to inspection in every case. *Newspapers Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

There is no authority with respect to 911 tapes *per se*. However, radiologs are generally subject to inspection. 67 Wis. Op. Att’y Gen. 12 (Jan. 25, 1978). Requests seeking copies of 911 tapes, like all other requests, must be reasonably limited and defined. *See Schopper v. Gebring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187, 189-90 (Ct. App. 1997).

Investigatory records generally are subject to the common law balancing test. *Appleton Post-Crescent v. Janssen*, 149 Wis. 2d 294, 441 N.W.2d 255 (Ct. App. 1989). *Journal/Sentinel Inc. v. Aagerup*, 145 Wis. 2d 818, 429 N.W.2d 772 (Ct. App. 1988). Investigatory records in the hands of the district attorney are absolutely immune from public inspection. *State ex rel. Richard v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991).

When an investigation is closed and no prosecution or disciplinary action is either ongoing or contemplated, there is no risk that releasing a police report will interfere with

an enforcement proceeding or jeopardize anyone’s right to a fair trial. *Linzmeier v. Forcey*, 2002 WI 84 ¶ 39, 254 Wis. 2d 306, 331, 646 N.W.2d 811, 821.

Records such as the police blotter reporting on arrests in chronological order are subject to inspection, but “rap sheets” compiling an individual’s arrest history are probably not. *Newspapers Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

There is no statute restricting access to the identity of victims. The record created on procedures for the award of compensation to victims is generally subject to public inspection unless otherwise provided by law. Wis. Stat. § 949.16.

Confessions are subject to the balancing test.

Informants who have received a specific pledge of confidentiality are not subject to having their identities disclosed. *Mayfair Chrysler-Plymouth Inc. v. Baldarotta*, 162 Wis. 2d 142, 469 N.W.2d 638 (1991). *See also* Wis. Stat. § 905.10 providing informer privilege. Confidential informants’ identities are not to be disclosed to subject of information. Wis. Stat. § 19.35(1)(am)2.b.

A mug shot is a “record” under the law, *State ex rel. Borzycz v. Paluszcyk*, 201 Wis. 2d 523, 549 N.W.2d 253 (Ct. App. 1996), and inspection is likely to be allowed under *Newspapers Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979).

Wyoming

No provision directly deals with accident reports. The court in *Sheridan Newspapers*, 660 P.2d 785, made it clear that police records may not be withdrawn to protect the privacy of individuals. *See* Wyo. Stat. § 16-4-203(b).

Police blotters are open. *See Sheridan Newspapers*, 660 P.2d 785.

Information obtained through 911 telephone systems is not available for inspection except to the person in interest, law enforcement personnel, public agencies for the purpose of conducting official business, or pursuant to court order. Wyo. Stat. § 16-

4-203(d)(x) (1977 & Cum. Supp. 1996).

For investigatory records, a balancing test must be applied. *See* Wyo. Stat. § 16-4-203(b). The balancing test is applied whether the investigation is open or closed. Obviously, the harm caused by any interference with the investigation or prosecution is more likely to occur when the investigation is active.

In *Sheridan Newspapers*, 660 P.2d 785, the police department had a policy of denying access to its “rolling log” and case reports. The court held that the blanket denial of

access to these records was improper. *Id.* Access could be denied only on a case-by-case basis when the custodian determined that a particular record included sensitive investigatory material or material compiled for the purpose of prosecution. *Id.* The public interest balancing test must therefore be applied before denying access. *Id.*

“Criminal history records” may be disseminated by Wyoming Criminal Identification Division and local law enforcement agencies and agents for investigatory and intelligence purposes only. Wyo. Att’y Gen. Op. 86-



AP PHOTO BY LOUIS LANZANO

Actor Russell Crowe is taken in handcuffs from a New York police precinct in June 2005 after being arrested for assault.

008 (1986).

There is no provision for protecting victims from publicity, and case law does not appear to provide any protection. *See Sheridan Newspapers*, 660 P.2d 785.

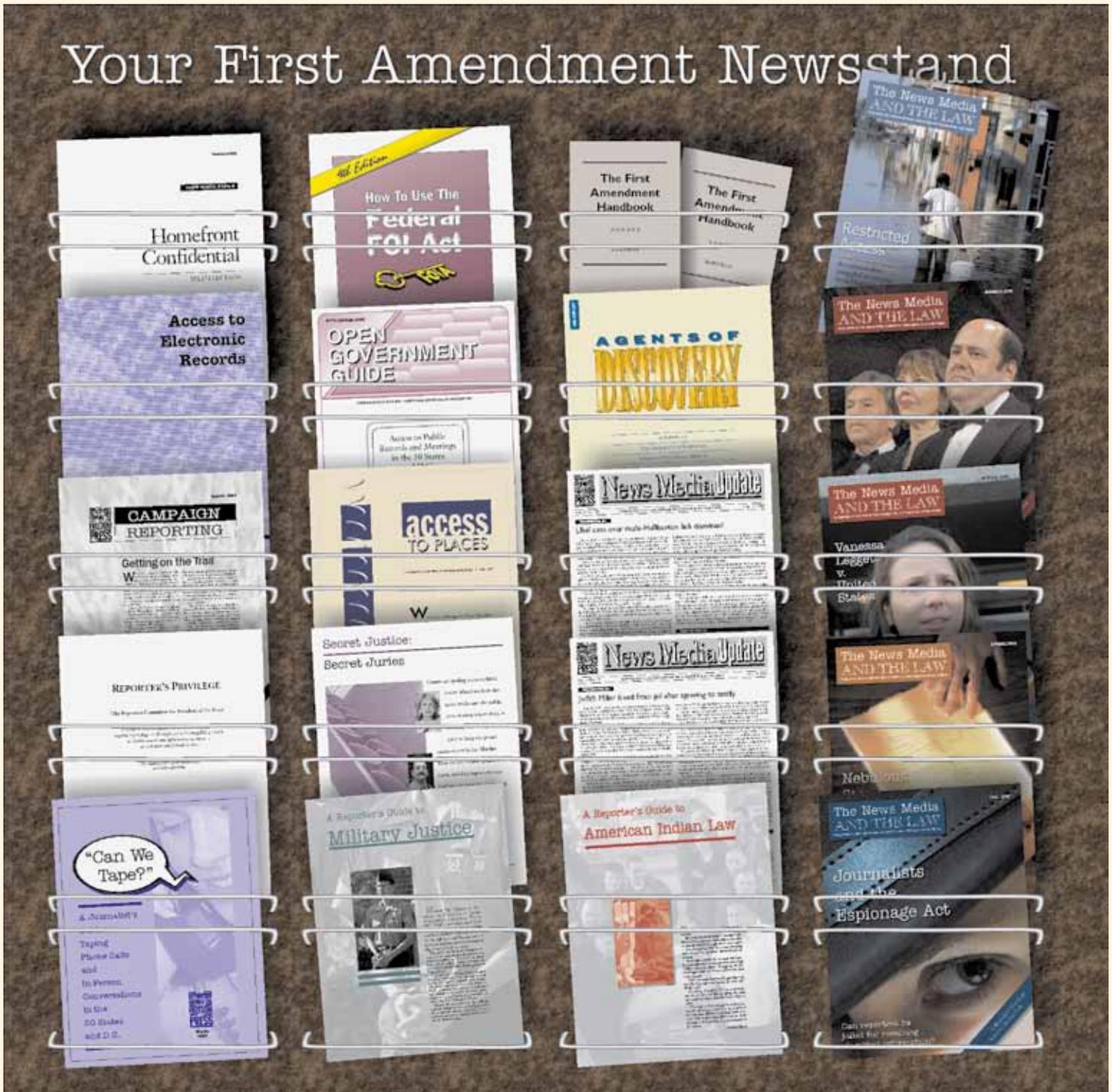
Confessions might be exempt, subject to the custodian’s discretion if it would interfere with the investigation or prosecution. *See* Wyo. Stat. § 16-4-203(b) and *Sheridan Newspapers*, 660 P.2d 785.

Records identifying confidential informants might be exempt, subject to the custodian’s discretion. *See* Wyo. Stat. § 16-4-203(b) and *Sheridan Newspapers*, 660 P.2d 785.

Records revealing police techniques might be exempt, subject to the custodian’s discretion. *See* Wyo. Stat. § 16-4-203(b) and *Sheridan Newspapers*, 660 P.2d 785.

There are no provisions for mug shots. *See* Wyo. Stat. § 16-4-203(b) and *Sheridan Newspapers*, 660 P.2d 785.

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