

# To redact or not redact...

## *The conflict between state juvenile law and open records law*

One of the most-often asked questions on the hotline relates to law enforcement's release of the names of juveniles involved in various matters in towns. I can tell there are many local police departments who simply redact the name of a juvenile anytime they are involved in an incident, whatever the circumstances are that gave rise to that name being included.

I think that's the wrong interpretation of state law. However, there have not been a tremendous number of cases which have dealt with the conflict between the state juvenile law and the open records law.

As all of you know, the law regarding access to incident reports from law enforcement (section 610.100) states "All incident reports and arrest reports shall be open records."

The only redaction of names from an incident report that is permitted is that if it contains information "that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source... or a suspect not in custody..."

On the other hand, the statute that mandates closure of juvenile court records (Section 211.321) states at the beginning of subsection 1, "Records of juvenile court proceedings as well as all information obtained and social records prepared in the discharge of official duty for the court shall not be open to inspection or their contents disclosed, except by order of the court to persons having a legitimate interest therein..."

Does that mean all records involving juveniles can be closed? Not necessarily, I believe. First, I think it's important to note this statute relates only to juvenile court proceedings, and does not cover other sets of facts not involving a juvenile court proceeding, although it is often cited by law enforcement as a reason to close a record containing a juvenile's name.

There is only one case I can find that involves both the open records law and the juvenile statute. In that



Jean Maneke,  
is MPA's Legal Hotline attorney.  
Contact her at (816) 753-9000;  
jmaneke@manekelaw.com.

case, the *St. Louis Post-Dispatch* sought access to a civil circuit court proceeding involving a child facing suspension from school who alleged he was handicapped. The court needed to consider that factor in regard to the school's allegations he brought a handgun to school. In this case, the court held the matters to be discussed in the courtroom so involved issues about which a strong personal privacy right attached that the paper did not have a right of access sufficient to justify its presence in the courtroom for the proceeding.

That is understandable, but doesn't give us any guidance to use as authority for law enforcement to block out the name of a juvenile who was involved in an incident and for whom there seems to be no risk of a "clear and present danger" to their safety.

I also know of one attorney general opinion touching on the relationship between the two statutes. That opinion, Number 37-2003 (meaning it was issued in 2003), was in response to a letter to former Mayor Mike

Rich, of Warrensburg, who queried to then Attorney General Jay Nixon "how a municipality should treat requests for disclosure of arrest reports and incident reports which contain identifiable information about juveniles."

That request specifically noted "The reports may involve the juveniles as the offenders or as the victims in

abuse or neglect matters."

The AG opinion was specific that it limited its applicability "to records from juvenile court proceedings." So, it doesn't apply to any other situation. After detailing the language in Section 211.321, the opinion concluded, "the law enforcement agency must decide if the record itself is subject to disclosure." It also stated, "if the record is an open record, then all identifying information regarding juveniles must be redacted..."

I have a feeling many folks who look at this opinion and see that sentence, may forget that the Attorney General's opinion was limited "to records from juvenile court proceedings." It ONLY applies to records relating to juvenile court matters. It does NOT apply to all names of juveniles in all records of law enforcement.

Nixon's office itself seems to get confused, because it further states that the kinds of identifying information regarding juveniles that should be redacted would be "addresses, phone numbers, license plate numbers, physical descriptions, make and model of cars, names of family members, and other similar attributes."

Yes, that would be redactable if it is in a record about a juvenile court matter, but in that case the entire record would be closed because all juvenile court records are to be closed. It would, again, NOT close that information in any other kind

of a record that happened to contain a juvenile's name, assuming, again, there was no evidence of a "clear and present danger" to the juvenile as a victim.

There is absolutely no authority I'm aware of anywhere that would as a general rule close the name of a juvenile in every record of every public governmental body.

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