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Opinion No. 00-058

Publication of Criminal Court Records on the Internet.

QUESTIONS

1. May the records of the Criminal Court Clerk's Office (detailing the arrest, charge, and disposition) of individuals brought before the courts of Hamilton County be lawfully published through the Internet service?
2. If yes, then what must a county do to protect the individual and their privacy, in the event a court orders the individual's record of a particular charge expunged?
3. What duty does the record keeper have to insure that the correct individual is identified, *i.e.*, name, sex, race, address, Social Security number, etc.?

OPINIONS

1. Yes. Records of the Criminal Court Clerk's Office, including dispositions, records, documents, pleadings, and other papers filed with the court clerk, are public records which may be made available for public inspection over the Internet pursuant to Tenn. Code Ann. §10-7-123.
2. In the event the court orders a particular record expunged, the record keeper must remove all records ordered expunged from the Internet and destroy them.
3. The record keeper has no duty to insure that the correct individual is identified. The record keeper's duty is to maintain public records for public inspection, and in the event those records are published on the Internet, to protect them from being altered, deleted or impaired.

ANALYSIS

1. In Op. Tenn. Atty. Gen. 00-014 (January 26, 2000) (copy attached), this Office opined that criminal case dispositions, as well as all records, pleadings and documents filed with the court clerk, are public records that may be made available over the Internet pursuant to Tenn. Code Ann.

§10-7-123, unless a specific exception applies.

2. After an order of expungement is entered, the individual has a right to privacy and a statutory right prohibiting publication of expunged records. *See Fann v. City of Fairview*, 905 S.W. 2d 167 (Tenn. App. 1994).¹ Tenn. Code Ann. §40-32-101 governs the destruction and release of criminal records. Under that statute, a person who has received a favorable disposition of criminal charges may petition the court with jurisdiction over the criminal action for the destruction of public criminal records. The purpose of the expungement statute is to restore persons to the status they occupied before criminal proceedings began. *State v. Sims*, 746 S.W. 2d 191, 199 (Tenn. 1988).

Tenn. Code Ann. §40-32-102 makes the removal and destruction of expunged public records mandatory. This statute requires the expungement to be completed within 60 days of filing the petition. In Op. Tenn. Atty. Gen. 79-539 (December 21, 1979), this office concluded that the mandate to “remove and destroy” public records subject to an expungement order means “destruction or obliteration.” Thus, to comply with the statutory mandate and protect an individual’s right to privacy, the record keeper must remove the expunged records from the Internet and destroy them.

Tenn. Code Ann. §10-7-121 requires the maintenance of a back-up copy of all information published on the Internet. Accordingly, additional care must be taken in dealing with electronic information. It is the opinion of this office that records ordered expunged must be removed from the Internet, from the back-up copy, and from any other electronic storage media, and the information must be destroyed or obliterated.

3. Tenn. Code Ann. §18-1-105 establishes the general duties of court clerks. Among the duties prescribed is the duty to keep the dockets required by law. Subsection (a)(2) requires the clerk to keep “the several dockets . . . and keep a rule docket in which shall be entered the names of complainants and defendants in full.” Subsection (a)(4) requires the clerk to keep an execution docket “with the names of all plaintiffs and defendants in full.” The statute does not require the clerk to enter an individual’s sex, race, address, Social Security number, or any other identifying data on the docket. Additionally, Tenn. Code Ann. §18-1-106 requires the clerk to keep a judgment index containing the “name of each person . . . against whom a judgment or decree is rendered.” This statute requires the entries to be properly alphabetized, but there is no requirement that the clerk enter the individual’s race, sex, address, Social Security number, or other identifying data. Accordingly, it is the opinion of this office that the general statutory duties of court clerks do not include a duty to insure that the correct individual is identified in the docket entries and public

¹In *Fann v. City of Fairview*, 905 S.W. 2d 167 (Tenn. App. 1994) the plaintiff sought to recover damages arising from the disclosure and publication of arrest records ordered expunged. The Court of Appeals held that there can be no invasion of the right to privacy by publishing information which is already a matter of public record. *Id.* at 171. However, the Court held that a claim for invasion of privacy could be supported by the disclosure of information ordered expunged. *Id.* at 174.

records maintained by the court clerk.

Tenn. Code Ann. §18-4-103 establishes the specific duties of circuit and criminal court clerks. This statute imposes no duty of court clerks to insure the proper individual is identified in the docket entries and records maintained by the clerk. Furthermore, there is no duty imposed upon the clerk to review documents, orders and pleadings prepared and filed by attorneys, parties, or the court, to insure that the proper individuals are identified.

Tenn. Code Ann. §16-3-803(i) requires the administrative director of the courts to collect and compile caseload statistics pertaining to the state court system. Rule 11 of the Tennessee Supreme Court Rules requires the court clerk to cooperate with the administrative director to ensure the accuracy of statistical data compiled in accordance with that statute. Under this rule, the court clerk is directed to require that all documents initiating a criminal action be accompanied by a Criminal Case Cover Sheet which has been complete by the District Attorney General's office. These reports are forwarded to the Administrative Office of the Courts when all of the charges have been disposed of and are not maintained with the dockets and records of the court clerk. However, pursuant to Rule 11 of the Tennessee Supreme Court Rules, the court clerk has a duty to insure the accuracy of the information contained in the Criminal Case Cover Sheet.

Tenn. Code Ann. §18-1-306 makes it a Class A misdemeanor for any clerk to knowingly and willfully make a false entry, fail to make an entry required by law, or make out an imperfect or incorrect transcript of the proceedings, with the intent to affect the result of any cause. However, it is the opinion of this office that this statute does not extend to create a duty to insure proper identification of individuals.

The duty of the record keeper regarding the accuracy of the information published on the Internet is established by Tenn. Code Ann. §10-7-123(b). This statute requires the record keeper to "implement procedures and utilize a system (equipment and software) that does not allow records of that office which may be viewed through remote electronic means to be altered, deleted, or impaired in any manner." Thus, the record keeper must maintain the integrity of the information published on the Internet and insure that such information accurately represents the contents of the written public records. This includes maintaining the integrity of the public records during the process of copying or transferring information from print media to electronic media. However, it is the opinion of this office that this duty does not include a duty to insure proper identification of individuals.

Accordingly, it is the opinion of this office that the records of the Criminal Court Clerk's Office are public records which may be made available for public inspection over the Internet pursuant to Tenn. Code Ann. §10-7-123. In the event the court orders a particular record expunged, it is the opinion of this office that the record keeper must remove all records ordered expunged from the Internet and destroy those records, including any back-up copies. Furthermore, it is the opinion of this office that the record keeper has no duty to insure that the correct individual is identified. The court clerk's duty is to identify the parties to a case by their full name on the docket entries. The

record keeper's duty is to maintain public records for public inspection, and in the event public records are published on the Internet, the record keeper must insure the integrity of the information.

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