

CRIMINAL LAW AND PROCEDURE - Administration of Crime Victims Compensation Act;  
CRIMINAL LAW AND PROCEDURE - Confidential criminal justice information obtainable under Crime Victims Compensation Act;  
PRIVACY - Confidential criminal justice information obtainable under Crime Victims Compensation Act;  
PRIVACY - Public and confidential records maintained under Crime Victims Compensation Act;  
RIGHT TO KNOW - Confidential criminal justice information obtainable under Crime Victims Compensation Act;  
RIGHT TO KNOW - Public and confidential records maintained under Crime Victims Compensation Act;

MONTANA CODE ANNOTATED - Title 53, chapter 9; sections 39-71-221, 39-71-224, 44-5-102, 44-5-103(3)(a), 44-5-303, 53-9-104(2), 53-9-107;  
MONTANA CONSTITUTION - Article II, sections 9, 10.

- HELD: 1. Section 53-9-104(2)(a), MCA, authorizes the Workers' Compensation Division to obtain confidential criminal justice information.
2. The confidentiality of such information must be maintained when received by the Division.

14 November 1986

John C. McKeon  
Phillips County Attorney  
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Dear Mr. McKeon:

You requested an opinion concerning the availability of confidential criminal justice information to the Workers' Compensation Division pursuant to the Crime Victims Compensation Act.

The Workers' Compensation Division (Division) administers the Crime Victims Compensation Act, Tit. 53, ch. 9, MCA. Briefly, the Act authorizes the Division to compensate victims of crimes for bodily injury or death. The Act contains general requirements for eligibility, as well as procedures for applying for and awarding benefits.

A claimant's eligibility and amount of award depend upon various findings of the Division, such as whether a crime was committed and the claimant is a victim thereof or a dependent of a victim, whether the claimant contributed to the crime in any way, and whether the claimant is receiving compensation from collateral sources.

These determinations necessitate the Division's obtaining information from law enforcement agencies, especially in those cases where the defendant has not been identified, or where there has been no trial or other formal disposition. The Crime Victims Compensation Act enables the Division to obtain such

information. Section 53-9-104(2), MCA, provides in pertinent part:

The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. ...

This language is clear and unambiguous, and needs no further interpretation. See Missoula County v. American Asphalt, Inc., 42 St. Rptr. 920, 701 P.2d 990, 992 (1985). The Division is entitled to obtain from law enforcement agencies any information--including investigative information--it deems relevant to determine a claimant's eligibility and amount of award.

Section 53-9-104(2), MCA, does not exclude confidential criminal justice information. Indeed, it expressly includes such information. Investigative information is designated confidential criminal justice information in the Montana Criminal Justice Information Act of 1979, section 44-5-103(3)(a), MCA.

Section 44-5-303, MCA, delimits dissemination of confidential criminal justice information:

Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

Clearly, then, the Division may obtain such confidential information, because section 53-9-104(2)(a), MCA, authorizes it to do so.

Your next question is whether the Division must treat this information as confidential or as public record.

Section 53-9-107, MCA, provides: "The records the division maintains in its possession in the

administration of this part are open to public inspection and disclosure in accordance with the provisions of 39-71-221 through 39-71-224." Title 39, chapter 71, MCA, sets forth Montana's laws on workers' compensation.

Section 39-71-221, MCA, defines "public record" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics."

Section 39-71-224, MCA, provides in pertinent part:

(1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

This section does not expressly exempt confidential criminal justice information from public disclosure. However, it is my opinion that this statute must be read together with the Criminal Justice Information Act and pertinent provisions of the Montana Constitution. When so harmonized, the result compels continued confidentiality of the information. See City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221, 230 (1971) (where statutes relate to the same general subject they should be construed together to give effect to both where possible).

The Montana Constitution guarantees both the public's access to documents of public bodies, and the individual's right of privacy. Art. II, §§ 9, 10. Those sections provide that public documents may only be withheld when the demand of individual privacy clearly

exceeds the merits of public disclosure, and that the right of privacy may be infringed only with a showing of a compelling state interest.

Section 39-71-224, MCA, and the Criminal Justice Information Act are legislative declarations that certain kinds of information weigh in the balance in favor of individual privacy, and that no compelling state interest exists to infringe on that privacy. These legislative enactments were made with the Constitutional guarantees of public access and individual privacy in mind. Section 39-71-224(1), MCA, adopted the language of article II, section 10 of the Montana Constitution:

In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure ....

This section has taken records that were initially public and designated them private.

The Criminal Justice Information Act was likewise enacted with the constitutional guarantees in mind. One of the purposes of the Act is "to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination." § 44-5-102, MCA. The Act was enacted to protect the public's right of access as well as the individual's right of privacy. (See Minutes of Senate Judiciary Committee, February 7, 1979; House Judiciary Committee, March 13, 1979.) In defining "confidential criminal justice information" to include "criminal investigative information," the Legislature deemed such information to weigh in the balance of individual privacy, with no compelling state interest, in and of itself, to infringe on that privacy at any time, now or in the future. Section 44-5-303, MCA, not only limits the dissemination of confidential material to certain recipients, but also requires its continued designation as confidential.

It is clear that confidential criminal justice information received by the Division is intended to remain confidential. The information is often unsubstantiated and is potentially harmful to the

reputations of persons who are presumed innocent prior to any convictions. Premature disclosure of witness statements could pose a threat to the personal safety of the witnesses as well as to successful prosecution of the case.

The confidential criminal justice information received by the Division should thus be treated in accordance with section 39-71-224(2), MCA, which requires that confidential information be separated from the material available for public access.

THEREFORE, IT IS MY OPINION:

1. Section 53-9-104(2)(a), MCA, authorizes the Workers' Compensation Division to obtain confidential criminal justice information.
2. The confidentiality of such information must be maintained when received by the Division.

Very truly yours,

MIKE GREELY  
Attorney General