



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

July 17, 2015
OPINION 14-0170

90 – C – PUBLIC RECORDS

La. R.S. 15:574.12
La. R.S. 44:1 et seq.

Warden Burl Cain
Louisiana State Penitentiary
Angola, Louisiana 70712-9313

Inmate intake records donated to the Louisiana State Penitentiary Foundation by the Louisiana State Penitentiary, which have expired beyond their required retention and which have been confirmed by the custodian as constituting information of a general nature as described by La. R.S. 15:574.12(G), may be used and exhibited at the Louisiana State Penitentiary Museum, subject to any limitations set forth in the act of donation.

Dear Warden Cain:

Our office has received your request for an opinion concerning a project involving the Louisiana State Penitentiary ("LSP") and the Louisiana State Penitentiary Museum Foundation ("Foundation"). More specifically, the Foundation seeks to display and/or make available inmate identification card records initiated upon an inmate's intake into and release from the LSP. Your request qualifies that the records at issue are from the 1940's onward, with the most recent ones being from the 1990's.

Your letter indicates that the documents and images are not encumbered in any way and that the LSP has certified that the record retention period for the documents and images has elapsed and expired. Thus, these records would otherwise be destroyed in accordance with the policy of the Department of Public Safety and Corrections ("DPSC"). Further, you state that the LSP wishes to donate the records to the Foundation, as the Foundation believes the records to hold historical, social and cultural value. Further, the Foundation notes that there is a genealogical interest or value in preserving the records.

According to information provided to us, the Foundation has a mission of supporting the LSP Museum in its promotion of historical, educational, and cultural activities that are designed to preserve the history and development of corrections and justice in Louisiana. One of the stated purposes of the Foundation is to dedicate any profits received by the Foundation to the exclusive or sole benefit of the LSP Museum.¹ The close relationship between the Foundation and the LSP is reflected in the composition of the Foundation's board of directors, which includes the following individuals as ex-

¹ See Bylaws of the Foundation, Article II, Section 3.

officio members: the warden of the LSP; the deputy or assistant warden of the LSP, who has the responsibility and oversight of museum operations as delegated by the warden; and the administrative director of the LSP and/or an employee of the Administrative Services Division of the LSP who is a degreed accountant.²

In light of the above, you have asked for our opinion on the following questions related to the records at issue:

- Can the Foundation use and exhibit the photographs of inmates when such records have expired beyond the required retention under the DPSC's record retention schedule?
- Can the Foundation make the photographs and images available to the general public upon request?
- Can the Foundation make the photographs and images available to researchers?

We understand that the records at issue were created by the LSP upon intake of a prisoner and in some instances also include a photograph of the prisoner taken upon release. Your request references that the LSP intends to donate these records to the Foundation and your questions focus on the use and exhibition of photographs and images after they are donated to the Foundation. Considering the age of the records, we note that the series of records appear to concern former inmates who are both living and deceased.

There appears to be no debate that such records qualify as "public records" which have expired the required retention under the Public Records Act, La. R.S. 44:1 *et seq.*³ Relevant to the retention of corrections records, La. R.S. 44:36(D) provides:

All existing records or records hereafter accumulated by the Department of Public Safety and Corrections, corrections services, pertaining to any adult offender shall be retained and may not be destroyed until after six years from the date the full term sentence imposed upon such offender expires, or six years from the date of death of the offender, whichever occurs first.

Before directly responding to your inquiries, we note that La. R.S. 44:4.1(B)(7) incorporates in the Public Records Act, by reference, La. R.S. 15:574.12 as an exception to the Public Records Act. La. R.S. 15:574.12 speaks directly to the issue of confidentiality of information gathered, obtained or held by correction services related to "offenders and ex-offenders," providing, in pertinent part:

A. The presentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the Board of Pardons and committee on parole, the prison record, and any

² Bylaws, Article III, Section 2.

³ The definition of a "public record," in particular, is contained in La. R.S. 44:1(A)(2)(a).

other information obtained by the board or committee or the Department of Public Safety and Corrections, correction services and youth services, in the discharge of their official duties shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as provided by this Section.

B. Information may be released upon request without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the committee on parole, Board of Pardons, the governor, the sentencing judge, counsel for the juvenile in a delinquency matter, a district attorney or law enforcement agency, the personnel and legal representatives of the Department of Public Safety and Corrections, corrections services and youth services, including student interns, appropriate governmental agencies, or officials when access to such information is imperative for discharge of the responsibilities of the requesting agency, official, or court officer and the information is not reasonably available through any other means, and court officers with court orders specifying the information requested.

C. Fingerprints, photographs and information pertaining to arrests and dispositions of criminal charges may be released to criminal justice agencies without special authorization.

D. The secretary of the Department of Public Safety and Corrections or his designated representative and the deputy secretary of youth services or his designee may approve the reading of confidential information by the following:

- (1) Social service agencies assisting in the treatment of the offender or ex-offender.
- (2) Approved researchers who have guaranteed in writing anonymity of all subjects.

* * *

G.(1)(a) Notwithstanding the provisions of Subsection A of this Section, all information pertaining to an individual's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the pardon or parole of an individual, and discharge date shall be released to the general public at any time upon request.

* * *

H. The secretary of the Department of Public Safety and Corrections and the deputy secretary of youth services are authorized to establish rules and regulations to provide for the orderly administration of this Section.

I. It shall be a misdemeanor, punishable by a fine of not more than two thousand dollars or imprisonment for not more than one year, or both, for any member of the Board of Pardons and committee on parole or their employees to make public any confidential information.

The legislature has given a fairly broad statement of confidentiality surrounding information gathered or obtained by the DPSC regarding inmates in La. R.S. 15:574.12(A). La. R.S. 15:574.12(B) underscores the significance of such a characterization, clearly outlining what entities may receive information absent special authorization. Similarly, La. R.S. 15:574.12(C) authorizes the release of fingerprints, photographs, and information pertaining to arrests and dispositions of criminal charges to criminal justice agencies without special authorization. However, La. R.S. 15:574.12(G)(1)(a) authorizes the release to the general public, upon request, of statistical information, information pertaining to the disposition of criminal charges and incarcerations, and information of a general nature.⁴ Thus, this statute acknowledges a broad scope of confidentiality associated with records held by the DPSC in the performance of its duties. However, this is qualified by the language in Section G concerning records of a general nature about an inmate. The records, as described, appear to contain information of a general nature similar to the type of information described in Section G.⁵ Your specific inquiry involves the release of the photographs and fingerprints. Section C is the only section of this statute that mentions photographs and fingerprints; however, this section is not an exclusive statement as to who has authority to access photographs and fingerprints, but rather an authorization to facilitate the sharing of information about offenders and ex-offenders to criminal justice agencies.

Thus, while the statement regarding confidentiality in La. R.S. 15:574.12(A) is quite broad, it is not dispositive of the inquiry in light of the exception in Section G. However, it is also necessary to consider the limitation in Section G that the enumerated records must be made available to the general public upon request. Your questions allude to whether this language potentially provides an impediment to the display or use of the records in an exhibit. It is the opinion of this office that the language in Section G, when applied to the records donated to the Foundation and displayed by the Museum, does not require that each visitor make a request to view the records of a particular inmate. The Foundation intends to utilize the records in displayed exhibits to the general public and/or as research tools. When a member of the public seeks access to such records,

⁴ Please note that Sections C and G of La. R.S. 15:574.12 both include language addressing the voluntary or requested release of information pertaining to disposition of criminal charges. Irrespective of whether information has been requested about an inmate, Section C permits the release of such information about a particular inmate to a criminal justice agency without special authorization. Section G requires the release of such information about a particular inmate to the general public upon request.

⁵ While understanding that an argument could be advanced that the inmate intake cards, including the photographs and fingerprints of inmates, contain general statistical information as described by Section G, we qualify that we have not had the opportunity to review all of the records proposed for donation to the Foundation.

by visiting the museum or inquiring about the intake records, this would likely be sufficient to invoke the request for information mentioned in La. R.S. 15:574.12(G) (provided this satisfies any standards set by the DPSC and/or the LSP).⁶

With the above background information and pertinent law in mind, we now turn to your specific questions.

You first ask whether the Foundation may use and exhibit the photographs of inmates when such records have expired beyond the required retention under Louisiana's Public Records Law.

We are not aware that the DPSC has taken a position on the status of these records, i.e., whether the DPSC understands these records to fall within the general information described in La. R.S. 15:574.12(G). As described by La. R.S. 15:174.12(G)(1)(a), statistical information about an individual prisoner, information pertaining to disposition of criminal charges and incarcerations, and "information of a general nature including an individual's age, offense, date of conviction, length of sentence...and discharge date shall be released to the general public at any time upon request." While, again, we have not reviewed each of the pertinent records, it appears as though the inmate intake cards, generally, include factual information about the individual prisoner, much of which would be publicly available in court documents, information pertaining to the disposition of the charges against the prisoner and information pertaining to the individual's incarceration. However, two items of potential concern which may appear on some of the cards are images and fingerprints of an inmate.

There might be valid reasons for the DPSC to interpret La. R.S. 15:574.14 as making confidential the photographs of current inmates; however, the inquiry here is more specific insofar as it concerns former inmates. Further, we acknowledge that the DPSC may deem it appropriate to distinguish between living ex-offenders and deceased ex-offenders.⁷ If the DPSC has any concerns about the confidentiality of any information contained in the inmate intake cards, the DPSC should qualify the use and display of these items as a condition of the donation and such qualifications should be contained within any document reflecting the donation. However, it is the opinion of this office that any information on the card which is not confidential, as described by La. R.S. 15:574.12(G), could be used and exhibited by the LSP Museum, subject to redaction, if necessary, as described above.

Your remaining questions concern whether the records could be made available to the general public, or only to researchers, questions which appear to only be necessary if

⁶ We note that the pertinent administrative regulation, La. Admin. Code tit. 22, pt. I, § 101, does not specifically address the facts present in this request.

⁷ If DPSC does indeed take the position that photographs of current inmates are confidential, it is possible that DPSC has never had the occasion to take a formal position on whether such confidentiality would remain after the date an offender's full term sentence expires, or six years from the date of the death of the offender, whichever comes first. See La. R.S. 44:36.

we provided a negative response to your first question. Our conclusion that the records could be used and exhibited, subject to any necessary redactions or limitations set forth in the act of donation once the donation actually transpires, responds to both of your remaining inquiries.

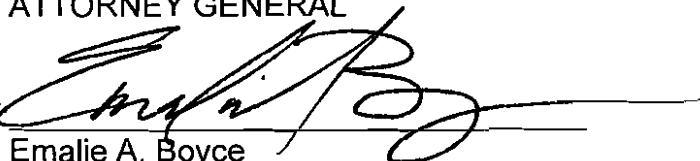
In conclusion, it is the opinion of this office that inmate intake records donated to the Foundation by the LSP, which have expired beyond their required retention and which have been confirmed by the custodian as constituting information of a general nature as described by La. R.S. 15:574.12(G), may be used and exhibited at the LSP Museum, subject to any limitations set forth in the act of donation.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY


Emalie A. Boyce
Assistant Attorney General

JDC: EAB