



Maneke law column

Juvenile records still limited under Sunshine Law

Late last fall, there were a number of reporters who called the hotline to report that they were suddenly having difficulties obtaining certain information from the Missouri Highway Patrol. Sometimes it involved highway accident reports. Sometimes it involved water patrol reports. But in every case, the reporter had the same frustration – the name of a juvenile in the report was not available. And not just the name. All other identifying information, other than the age, was being omitted from official reports.

Initial thoughts were that perhaps the Sunshine Law, specifically Section 610.100, which governs release of incident and investigative reports, might be helpful. That section contains nothing specifically allowing the disclosure of the names of minors in accident or incident reports. It does allow disclosure of information that is “likely to pose a clear and present danger to the safety” of a victim, witness or other person, but there was no evidence that any of these minors were in any personal danger as the result of the release of this accident or incident report.

However, it seems that perhaps the Highway Patrol has just recently realized it is illegal to release this information and this change is a result of the agency determining it should not be violating state law. Section 211.321, a statute in the state juvenile code, begins by talking about records of juvenile court proceedings being closed but, in subsection 3 of that statute, it provides

“ ‘Peace officers’ records, if any are kept, of children shall be kept separate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court.’ That subsection of [Section 211.321] has been included for more than 20 years ... ”

that “Peace officers’ records, if any are kept, of children shall be kept separate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court.” That section of the statute has been included for more than 20 years, it appears from looking at the legislative history of the statute.

(Incidentally, let me note here that the statute is slated for change in 2021, two years from now. On January 1 of that year, the age of 17 referenced in the statute above will increase to age 18.)

Therefore, I cannot argue that the highway patrol must release such information in regard to Sunshine Law requests.

Just last summer, another state’s law enforcement entity took some heat in regard to releasing official reports related to a sexual misconduct investigation involving minors. A city police department and a county sheriff’s department in Arkansas investigated sexual misconduct

allegations made by two siblings against their brother. In this case, the family happened to be stars of a popular reality show. Law enforcement promised the daughters, who were minors at the time, and other family members that their statements would remain confidential.

Subsequently, some members of the media requested via that state’s open records law a copy of these reports and eventually published an article

identifying the son as a target of an underage sex misconduct probe. While the daughters’ names were retracted, the salacious report of the events contained enough identifying information that there was no question as to who was being referenced.

First, a daughter filed a motion in state court to expunge copies of the City’s report from the public record, but copies of the report continued to be available on the Internet. Then the sisters’ attorneys filed a federal lawsuit claiming that the officials violated their constitutional and common law privacy rights by releasing the reports.

The Eighth Circuit Court of Appeals (the federal circuit that covers Missouri) in the past has ruled that public officials have some protection from liability for public disclosure of private information. But in this case, the Court felt there was significant humiliation resulting from release of such private and highly personal details. The Court issued a clear ruling that a minor victim of a sexual assault has a right not to have details of their abuse, or their identities, made public. Therefore, the Court found this to be a clear violation of their constitutional right to privacy, despite the application of the state open records law.

One municipal law attorney in Missouri noted in discussing this case that perhaps a city faced with a request for access to such a report would benefit by filing a declaratory lawsuit to have a court determine such a release was required. I think that’s a good idea, too, although I admit that my viewpoint is tainted by knowledge that when a member of the media is sued by a public body over a Sunshine Law request, if the media wins the suit, it is entitled to its attorneys fees as an award!



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