OLR RESEARCH REPORT

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OTHER STATES' FOI EXEMPTIONS PROTECTING PERSONAL PRIVACY

By: OLR Staff

You asked whether other states' freedom of information (FOI) laws exempt certain records from disclosure under a provision (1) generally protecting a person's privacy or (2) limiting disclosure of law enforcement investigatory records when disclosure would violate a person's privacy. You specifically asked these questions about laws that might apply to crime scene photos, 911 tapes or transcripts, and autopsy reports.

This report is a follow-up to OLR report 2013-R-0364, which compiles other states' laws directly addressing access to these records.

SUMMARY

We found 11 states with general exemptions in their FOI laws limiting disclosure of records in order to protect personal privacy, with the majority of these states protecting against unwarranted invasions of privacy. FOI laws in an additional four states protect privacy but it is unclear whether these states' laws cover the records you asked about. We do not include in this report provisions that limit disclosure of personal information in personnel or medical files, as these provisions would not apply to the records you asked about in most circumstances. In addition, we focused our research on each state's FOI laws and it is possible that a provision could be found elsewhere in a state's statutes.

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Most states' FOI laws limit disclosure of law enforcement investigative records. Some states prohibit disclosure of these records at any time while others only do so during an investigation. Some also limit disclosure to certain circumstances, such as protecting someone from physical harm, protecting investigative techniques, or protecting personal privacy. We found eight states that consider personal privacy interests when determining whether to disclose law enforcement investigative records.

GENERAL PRIVACY EXEMPTIONS

We found 11 states with general exemptions in their FOI laws limiting disclosure of documents in order to protect personal privacy. These states' laws vary.

- Seven states (Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, and Michigan) limit disclosure where it would be an unwarranted invasion of privacy. All but two of these states (Maryland and Massachusetts) require that it be a "clearly" unwarranted invasion of privacy. Some of these states further define what constitutes an invasion of privacy.

- New Jersey places an obligation on agencies to safeguard personal information when disclosure would violate a citizen's reasonable expectation of privacy.

- South Dakota exempts records from disclosure when it would be an unreasonable release of personal information.

- Utah allows agencies to designate records as private if they contain data which, if disclosed would be a clearly unwarranted invasion of privacy. An agency can disclose a private record if there is no interest in restricting it or the interests favoring access are equal to or exceed those favoring restriction.

- Iowa allows a court to prohibit disclosure of records when disclosure is not clearly in the public interest and would substantially and irreparably injure a person.

Table 1 briefly describes the law in these 11 states, with relevant citations.

Table 1: General FOI Exemptions from Disclosing Documents to Protect Personal Privacy

State (citation)	*Exemption's Application*
Hawaii (Haw. Rev. Stat. §§ 92F-13(1)) and -14)	• Agencies are not required to disclose records when disclosure would constitute a clearly unwarranted invasion of personal privacy • Disclosure is not a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual (the law provides examples of significant privacy interests, including when information relates to an investigation into a possible crime)
Illinois (5 ILCS 140 § 7)	• Agencies are prohibited from disclosing personal information which would constitute a clearly unwarranted invasion of personal privacy, unless the record's subject consents • An unwarranted invasion of personal privacy means disclosing information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information • Disclosures related to public employees' or officials' duties are not considered an invasion of personal privacy
Iowa (Iowa Code § 22.8)	• A court may prohibit disclosure of a record if it would (1) clearly not be in the public interest and (2) substantially and irreparably injure any person or persons • Courts must consider the policy that free and open examination of public records is generally in the public interest even though examination may cause inconvenience or embarrassment to public officials or others
Kansas (Kan.Stat. §§ 45-221 (a)(30) and -217)	• Unless the law otherwise requires disclosure, a public agency is not required to disclose records containing information of a personal nature where the disclosure would constitute a clearly unwarranted invasion of personal privacy • A clearly unwarranted invasion of personal privacy is revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate public concern • Under case law, it appears that only the person whose privacy may be invaded can raise this exemption (*Nicholas v. Nicholas*, 277 Kan. 171; *Burroughs v. Thomas*, 23 Kan.App.2d 769)
Kentucky (Ky.Rev.Stat. § 61.878(1)(a))	Agencies cannot disclose records containing information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, without a court order
Maryland Md. Code Ann., State Gov't § 10-612	The FOI laws must be construed in favor of permitting inspection of a public record unless an unwarranted invasion of the privacy of a person in interest would result
Massachusetts (Mass. Gen. Laws ch.4, § 7, cl. 26(c); ch. 66, § 10)	• Records are exempt from disclosure if they relate to a specifically named individual and the disclosure may constitute an unwarranted invasion of personal privacy • Under case law, agencies must balance the seriousness of the invasion of privacy and the public's right to know (*Georgiou v. Comm. Of Dept. of Indus. Accidents*, 854 N.E. 2d 130 ((2006)). But exemptions are strictly construed and the public's right to know should prevail unless disclosure would publicize intimate details of a highly personal nature (*Atty. Gen. v. Ass't Com'r of Real Property Dept. of Boston*, 404 N.E.2d 1254 (1980)).
Michigan (Mich. Comp. Laws Ann. § 15.243(1)(a))	Records are exempt from disclosure if the information is of a personal nature and disclosure would constitute a clearly unwarranted invasion of an individual's privacy
New Jersey (N.J. Rev. Stat. § 47:1A-1)	Public agencies have an obligation to safeguard from public access a citizen's personal information with which they have been entrusted when disclosure would violate the citizen's reasonable expectation of privacy

Table 1: -Continued-

South Dakota (S.D. Codified Laws § 1-27-1.5 (22))	Records are exempt from disclosure if disclosure would constitute an unreasonable release of personal information
Utah (Utah Code §§ 63G-2-102 and -201, et seq.)	• The open records law states the legislature's intent to recognize two constitutional rights: the public's right to access information about the conduct of the public's business and the right of privacy in relation to personal data gathered by government entities • If properly classified by a governmental entity, records are private if they contain data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy. A governmental entity may disclose a private record if there is no interest in restricting it or the interests favoring access equal or exceed those favoring restriction

At least four other states protect personal information in specified types of files but their laws may apply more broadly. We briefly describe the laws in these states in Table 2 because their laws' scope is unclear and may apply to the records you asked about (records such as crime scene photos, 911 tapes or transcripts, and autopsy reports).

Table 2: States With Privacy Protections that May Apply to the Relevant Records

State (citation)	*Exemption's Application*
New York (N.Y. Public Officers Law § 87(2)(b)) (McKinney's)	Agencies may deny access to records or portions of them when disclosure would constitute an unwarranted invasion of personal privacy (the statutes provide a non-exhaustive list of examples and it is not clear how broadly this provision applies)
Oregon (Or. Rev. Stat. § 192.502 (2))	• Information of a personal nature is exempt from public disclosure if it would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance • This applies to information such as, but not limited to, that kept in personal, medical, or similar files
South Carolina (S.C. Code § 30-4-40(a)(2))	• Agencies are not required to disclose information of a personal nature where public disclosure would constitute an unreasonable invasion of personal privacy • Information of a personal nature includes, but is not limited to, information as to gross receipts contained in business license applications and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of persons solely by virtue of their handicap • This provision must not be interpreted to restrict access by the public and press to information contained in public records
West Virginia (W. Va. Code § 29B-1-4)	Information of a personal nature such as that kept in a personal, medical, or similar file is exempt from disclosure if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance

LAW ENFORCEMENT RECORDS

Most state FOI laws limit disclosure of law enforcement investigative records. We found eight states that consider personal privacy interests when determining whether to disclose law enforcement investigative records. Table 3 displays these states and the relevant citations.

Table 3: States That Limit Disclosure of Law Enforcement Investigation Records Based on Invasion of Privacy

State	*Citation*
Alaska	Alaska Stat. § 40.25.120
Colorado	Colo. Rev. Stat. § 24-72-204(2)(a); *Harris v. Denver Post Corp.*, 123 P.3d 1166 (Colo. 2005)
Idaho	Idaho Code § 9-335
Maryland	Md. Code State Gov't § 10-618
Michigan	Mich. Comp. Laws § 15.243(1)(b)(iii)
New Hampshire	*Murray v. New Hampshire Div. of State Police*, 154 N.H. 579 (2006), reaffirming *Lodge v. Knowlton*, 118 N.H. 574 (1978)
Rhode Island	R.I. Gen. Laws § 38-2-2(4)(D)
Washington	Wash. Rev. Code §§ 42.56.050, .210, and .240

These states differ in how they address personal privacy.

- Five states (Alaska, Idaho, Michigan, New Hampshire, and Rhode Island) limit disclosures that constitute an unreasonable invasion of personal privacy. Three of these states (Alaska, New Hampshire, and Rhode Island) require a reasonable expectation that the disclosure would cause an unwarranted invasion of privacy and two states (Alaska and Idaho) specify that the exemption protects only the personal privacy of a suspect, defendant, victim, or witness.

- Maryland allows agencies to deny inspection of law enforcement records but they may only do so to a person in interest for certain reasons, including when disclosure would constitute an unwarranted invasion of personal privacy.

- Washington also prohibits disclosing law enforcement records when it is essential to protect any person's right of privacy. This law prohibits disclosing information that is (1) highly offensive to a reasonable person and (2) not of legitimate public concern.

- Colorado agencies can deny access to investigatory records if disclosure would be contrary to the public interest. Under case law, agencies exercising this discretion must balance (1) the privacy interests of affected individuals, (2) the agency's interest in keeping confidential information confidential, (3) the agency's interest in not compromising ongoing investigations, (4) the public purpose to be served in allowing inspection, and (5) any other pertinent consideration relevant to the particular circumstances (*Harris v. Denver Post Corp.*, 123 P.3d 1166 (Colo. 2005)).

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