

ATTORNEY GENERAL

STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

December 9, 2015

Marty Lambert
Gallatin County Attorney
Judge Guenther Memorial Center
1709 West College
Bozeman, MT 59715

Re: Request for Attorney General Opinion – Dissemination of Booking Photos

Dear Mr. Lambert:

This letter responds to yours of September 18, 2015, wherein you request an Attorney General Opinion on the following two questions:

1. Are photographs collected and preserved as part of the booking process by the Gallatin County Sheriff's Office (i.e., "booking photos") protected as either confidential criminal justice information (CCJI) or criminal history information by the Montana Criminal Justice Information Act ("Act")?
2. If booking photos are protected as CCJI or criminal history record information, are such photos protected from dissemination to a media organization unless a demonstrated exception applies?

You and I have since discussed that request by phone, and I advised you that the issue was before Judge Oldenburg in Fergus County, on a case referred by Park County entitled *Park County v. Jovanne Lee Ashley*, Case No. DC 2015-49. Enclosed you will find a copy of Judge Oldenburg's *Order* deciding a request virtually identical to that posed by you. As you will see, Judge Oldenburg's analysis under § 44-5-103 and other relevant statutes within Title 44, Ch. 5 MCA (cited by both you and the Court) results in the answer to your first question being "no." According to Judge Oldenburg a "booking photo" is public criminal justice information as part of the daily jail roster, the photo has no evidentiary value and the public's constitutional right to know outweighs the defendant's privacy expectation. Because booking photos are "public criminal justice information" the *Order* nullifies the bases of your second question.

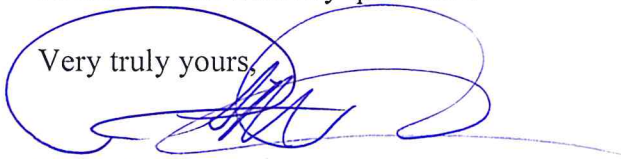
Marty Lambert
Gallatin County Attorney
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While I understand your position regarding the precedential effect of Judge Oldenburg's decision on that issue, it is the policy of this office to decline the issuance of an Attorney General Opinion when the matter is directly at issue in a pending litigation or when the issue has already been decided by a court of record, including District Courts. Because Judge Oldenburg has decided this issue based upon an interpretation the same statutes that would be interpreted to answer your request, this office respectfully declines your request for an Attorney General Opinion under the two questions posed in your letter of September 18, 2015.

I have also enclosed for your reference a copy of the *Motion and Brief* supporting the release of the defendant's booking photos in *Park County v. Ashley*, filed by Park County Attorney Bruce Becker. The *Motion and Brief* pleading analyzes the same statutes that both you and Judge Oldenburg considered.

Please call me with any questions.

Very truly yours,



PATRICK M. RISKEN
Assistant Attorney General

cc: JWB
ALJ

encl.