

Government of the District of Columbia

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IN REPLY REFER TO:

L&O:LNG:lng

(AL-95-154)

March 24, 1995

The Honorable Jack Evans
councilmember, Ward 2
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Re: Maya citizen group pUblish the names of
persons arrested for soliciting prostitutes?

Dear Councilmember Evans:

This is in response to your recent inquiry concerning whether a citizen group may publish the names of persons arrested for soliciting prostitutes.

There is no law that would prohibit a citizen group from pUblishing the names of persons arrested for soliciting prostitutes. If, however, the citizen group seeks to obtain the names of such persons from the Metropolitan Police Department's Identification and Records Division (located in the Municipal Center), it is relevant to point out that under the "Duncan Ordinance"¹ the Police Department cannot release to the pUblis from its central criminal records² a record of an arrest unless the arrest relates to an

The "Duncan Ordinance" was adopted by the Board of Commissioners of the District of Columbia on October 31, 1967, as one of its last acts before it was replaced by the Commissioner/appointed Council form of government pursuant to Reorganization Plan No.3 of 1967, which became effective on November 3, 1967. The ordinance was named for the corporation Counsel (Charles T. Duncan) who headed the committee that drafted it. See generally, utz v. Cullinane, 520 F.2d 467, 483-487 (D.C. Cir. 1975). The authority to amend the provisions of the Duncan Ordinance lies with the Council. Id., 520 F.2d at 491.

² These are the arrest records that are required to be maintained by D.C. Code § 4-132(a) (1994) which was codified at D.C. Code § 4-134a in the 1973 edition of the D.C. Code. See utz v. Cullinane, 520 F.2d 467, 484-486, note 46 (D.C. Cir. 1975).

offense for which the person was convicted or forfeited collateral. See 1 DCMR § 1004.4. Moreover, the Duncan Ordinance also provides that "[a]pplicants [for copies of arrest records] who are not the persons to whom those records may relate shall...present releases in appropriate form executed by the persons to whom the records may relate." 1 DCMR § 1004.7. Since it is highly unlikely that a person arrested for soliciting a prostitute would be willing to execute a release form authorizing a citizen group to obtain a copy of his arrest record for the purpose of publishing the fact of his arrest for solicitation, the practical reality is that a citizen group will not, under current law, be able to obtain from the Metropolitan Police Department's Identification and Records Division the names of persons arrested for soliciting prostitutes.

D.C. Code § 4-131 (1994) requires the Metropolitan Police Department to keep "Arrest books" which are required to contain "Case number, date of arrest, and time of recording of arrest...; (B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested; (C) Offense with which person arrested was charged and place where person was arrested; (D) Name and address of complainant; (E) Name of arresting officer; and (F) Disposition of case." Under D.C. Code § 4-135 (1994), these arrest books, which are maintained at each Police District Headquarters, are required to be "open to pUblc inspection when not in actual use...³ Thus, a citizen group may inspect these arrest books to determine the names of persons who have been arrested for soliciting prostitutes. Finally, it does not appear that the District government would be exposed to any legal liability for the pUblcation by private persons of criminal information that by statute is required to be open to public inspection. Compare Paul v. Davis, 424 U.S. 693, 712-714 (1976) (no constitutional privacy right affected by pUblcation of name of arrested but untried shoplifter).

Sincerely,



Garland Pinkston, Jr.
Acting Corporation Counsel

³ Congress required these chronological arrest books to be open to public inspection in order "to prevent 'secret arrests,' a concept odious to a democratic society; in view of the statutory requirement" that such records be pUblc, any attempt to prohibit pUblc inspection of the arrest books would run into substantial legal difficulties." Morrow v. District of Columbia, 417 F.2d 728, 741-742 (D.C. Cir. 1969).