

Executive Law Article 22, §§ 623(4), 623(5), 624(1), 627(2), 633(3); Civil Rights Law §§ 50-b, 50-b(1), 50-b(2)(a); Public Officers Law §§ 92(1), 92(7), 96

When requested by the Crime Victims Board in relation to an investigation into a claim for award, local law enforcement agencies may provide the Board with police reports, even when the reported crime involves a sex offense or an offense involving the alleged transmission of HIV.

August 8, 2007

John Watson
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New York State Crime Victims Board
1 Columbia Circle
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Formal Opinion
No. 2007-F3

Dear Mr. Watson:

You have requested an opinion regarding the authority of the Crime Victims Board (the Board) to request and obtain police reports from local law enforcement agencies in New York. The Board has encountered some resistance from local law enforcement agencies in response to its requests for police reports. As explained more fully below, we are of the opinion that, under the circumstances you have described, local law enforcement agencies may provide police reports to the Board when requested by the Board.

Analysis

The Board was established, pursuant to article 22 of the Executive Law, to provide financial assistance to victims of crime. Among its powers and duties, the Board is authorized to "hear and determine all claims for awards" filed with the Board. Executive Law § 623(5). After the Board receives a claim for an award, the Board initiates an investigation into the validity of such claim to determine whether an award may properly be granted. Id. § 627(2). To determine whether the claimant is eligible for an award, the Board must establish the identity of the victim of the reported crime. Id. § 624(1) (specifying persons eligible for an award, including the victim of a crime and certain persons related to or associated with a victim). You have advised that the police reports are sought to confirm the identity of the crime victim.

Also among its powers, the Board is authorized to

request from the division of state police, from county or municipal police departments and agencies and from any other state or municipal department or agency, or public authority, and the same are hereby authorized to provide, such assistance and data as will enable the board to carry out its functions and duties.

Id. § 623(4). You have advised that the police reports are necessary for the Board to perform its functions and duties. We therefore are of the opinion that the Board is authorized to request police reports from local law enforcement agencies and local law enforcement agencies are authorized to provide such reports. Cf. Op. Att'y Gen. No. 90-F7 (Public Transportation Safety Board's statutory authority to "request and receive from any . . . public authority such assistance, information and data as will enable the office properly to carry out its powers and duties" authorized it to request and receive personnel records of New York City Transit Authority employees).

You have advised that some local law enforcement agencies have resisted providing the Board with police reports out of concern that doing so may violate Civil Rights Law § 50-b. Section 50-b provides that the identity of a victim of a sex offense or of an offense involving the alleged transmission of HIV shall be confidential. Civil Rights Law § 50-b(1). It prohibits making available for public inspection any report, paper, picture, photograph, court file or other documents in the custody or possession of any public officer or employee that identifies such a victim, and further prohibits the disclosure of such documents that tend to identify such a victim, except as otherwise provided therein. Id. However, it expressly authorizes disclosure to "the public officers and employees charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of their duties." Id. § 50-b(2)(a) (emphasis added).

We established above that the Board confirms the identity of a crime victim pursuant to its statutory duty to determine claims for awards. Applying the exception of section 50-b(2)(a), we conclude that Civil Rights Law § 50-b(1) does not prevent local law enforcement agencies from providing the Board with the requested police reports. Our conclusion is based on the unique statutory responsibility the Board has for providing financial assistance to victims of crime.

The Personal Privacy Protection Law limits the disclosure of certain personal information, including names, by agencies. Public Officer Law §§ 92(7), 96. "Agency," for purposes of the Personal Privacy Protection Law, is defined as

any state board, bureau, committee, commission, council, department, public authority, public benefit corporation, division, office or any other government entity performing a governmental or proprietary function for the state of New York, except the judiciary or the state legislature or any unit of local government and shall not include offices of district attorneys.

Id. § 92(1) (emphasis added). Because the question you have asked concerns disclosure by local law enforcement agencies, the Personal Privacy Protection Law is not implicated. See Seelig v. Sielaff, 201 A.D.2d 298 (1st Dep't 1994).

You have recognized, and we emphasize, that to the extent the Board obtains reports or records that are otherwise protected from disclosure by law or regulation, it must maintain the confidentiality of such reports or records subject to such other law or regulation. Executive Law § 633(3).

In summary, we conclude that, when requested by the Board in relation to an investigation into a claim for award, local law enforcement agencies may provide the Board with police reports, even when the reported crime involves a sex offense or an offense involving the alleged transmission of HIV.

Very truly yours,

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Attorney General