



State of West Virginia
Office of the Attorney General

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The Honorable Lucas J. See
Hardy County Prosecuting Attorney
204 Washington Street, Room 104
Moorefield, WV 26536

Dear Prosecuting Attorney See:

You have asked for an Opinion of the Attorney General regarding the ability of a prosecutor's office to receive initial computer aided dispatches ("CADs") that are maintained by county 911 call centers. This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

The Hardy County 911 Center ("911 Center") is a county answering point, or "a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to specific requests for emergency service." W. Va. Code § 24-6-2(2). Whenever the 911 Center dispatches a law-enforcement officer in response to a call, it generates an initial CAD. An initial CAD is used to "track calls, register times and make notations regarding emergency events." *Owner-Operator Indep. Drivers Ass'n, Grain Valley, MO v. PIFERS Serv. Cntr, LLC*, 2016 WL 691602, *3 (W. Va. Pub. Serv. Comm'n Feb. 3, 2016). In your letter, you explain that you asked the 911 Center to send copies of all initial CADs to your office, as well as to the officer, so that your office can "keep up with officer contacts with people who may be on probation or have safety plans, etc." and more easily "interface with urgent information changes or concerns." The 911 Center, however, has declined to provide the initial CADs to your office.

Your letter raises the following legal question:

Does a county answering point have a legal obligation to provide a prosecuting attorney with copies of all initial CADs?

We conclude that West Virginia law gives a county answering point discretion to release this information to a prosecuting attorney, but that disclosure is only mandatory in limited circumstances.

Discussion

West Virginia Code § 24-6-13(a) provides that “[a]ll calls for emergency service reporting alleged criminal conduct which are recorded electronically, in writing or in any other form are to be kept confidential.” A county answering point, however, “may release information to bona fide law-enforcement agencies, the prosecuting attorney of a county or a United States Attorney pursuant to a lawful criminal investigation.” *Id.* § 24-6-13(d). The 911 Center relied on this statutory provision to refuse your office’s request for all initial CADs in Hardy County. And because “the word ‘may’ is permissive and not mandatory,” *Butler v. Tucker*, 187 W. Va. 145, 149 n.4, 416 S.E.2d 262, 266 n.4 (1992); *see also* Syl. pt. 1, *Pioneer Pipe, Inc. v. Swain*, 237 W. Va. 722, 791 S.E.2d 168 (2016), the 911 Center is correct that it had discretion under Section 24-6-13(d) to decline your office’s request. Nevertheless, two sections of the West Virginia Code may override this discretion in certain circumstances.

First, the statute governing information available to a multidisciplinary investigative team (“MDIT”) may require disclosure of initial CADs in certain circumstances. The MDIT scheme is designed to “[p]rovide[] a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing status offense and delinquency proceedings.” W. Va. Code § 49-4-401(a)(1). By law, “[t]he prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county” and the county’s MDIT “shall be headed and directed by the prosecuting attorney.” *Id.* § 49-4-402(a). Further, “[s]tate, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order directing the agencies to release information in its possession relating to the child.” *Id.* § 49-4-410; *see also id.* § 49-4-402(d) (identical statutory language).

As an initial matter, the requirement in Section 49-4-410 to provide information to an MDIT is triggered when “the team” makes a written request. As the head of the MDIT you have authority to make requests on behalf of the team, but there is no indication from your correspondence that your request was made in that capacity, as opposed to in your role as the prosecuting attorney.

Where an MDIT makes a valid request under Section 49-4-410, a county agency like the 911 Center has a mandatory duty to comply—“shall provide,” *see Woodring v. Whyte*, 161 W. Va. 262, 267, 242 S.E.2d 238, 241 (1978) (“use of the word ‘shall’ in a statute imparts a mandatory duty”)—to the extent “allowable by law.” W. Va. Code § 49-4-410. Even so, the information this

duty covers is very likely limited. Under a literal reading of the text a court might conclude that an MDIT is permitted to demand that *any* state, county, or local agency provide it with *any* information it requests for *any* purpose, unless disclosure is specifically prohibited by law. *See, e.g., Reed v. Exel Logistics, Inc.*, 240 W. Va. 700, 707, 815 S.E.2d 511, 518 (2018) (explaining that where the text of a statute is clear, there is no need to use other tools of statutory interpretation). Several factors, however, push against this conclusion. As our supreme court has repeatedly emphasized, “The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. pt. 3, *Pool v. Greater Harrison Cty. Pub. Serv. Dist.*, 241 W. Va. 233, 821 S.E.2d 14 (2018) (quoting Syl. pt. 1, *Smith v. State Workmen’s Comp. Comm’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975)). In our view, a court is likely to conclude that the Legislature intended to limit an MDIT’s ability to request information to circumstances relevant to the team’s work—and that Section 49-4-410 does not apply where a prosecuting attorney requests information for reasons unrelated to his or her status as head of the MDIT, no matter how helpful that information may be in fulfilling the prosecutor’s *other* duties.

Read in its entirety, Section 49-4-410 suggests that an MDIT’s authority to request information extends only to information relevant to its child-welfare purposes. As noted above, the statute provides that “[s]tate, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order *directing the agencies to release information in its possession relating to the child.*” W. Va. Code. § 49-4-410 (emphasis added). Because a court may only order an agency to provide information to an MDIT when that information relates to a child, it would be an odd result to interpret the statute as allowing the MDIT to demand information from the agency directly for any purposes. This language thus provides some indication that an MDIT demand must be rationally related to a child’s welfare. *See Hammons v. W. Va. Office of Ins. Comm’r*, 235 W. Va. 577, 591, 775 S.E.2d 458, 472 (2015) (“statutes cannot be read in isolation but rather must be considered as a part of the entire statutory scheme of which they form a part”).

Section 49-4-410 also cannot be read in isolation; the entire statutory scheme—including its purpose—bears on its meaning. *See Arbaugh v. Bd. of Educ., Cty. of Pendleton*, 214 W. Va. 677, 683, 591 S.E.2d 235, 241 (2003). An MDIT’s purpose is to “coordinat[e] or cooperat[e] in the initial and ongoing investigation of all civil and criminal allegations pertinent to *cases involving child sexual assault, child sexual abuse, child abuse and neglect.*” W. Va. Code § 49-4-402(c) (emphasis added). It would not advance these statutory goals to interpret Section 49-4-410 as allowing an MDIT to request initial CADs when law enforcement is dispatched for reasons that have nothing to do with an offense against a child. If anything, it may detract from the MDIT’s proper purpose by flooding it with information irrelevant to its goals. Further, this analysis is even more compelling for the identical language in Section 49-4-402(d), which is not only in the same article as the statement of the MDIT’s purposes quoted above (as for Section 49-4-410), but appears in the very next paragraph. And given the textual requirement in *both* sections that “the team” must request the information, the statutes appear to contemplate that the information requested will advance the purposes for which an MDIT was established in the first place. The more general purposes for which you requested all initial CADs, by contrast—“keep[ing] up with

officer contacts with people who may be on probation or have safety plans, etc.”—encompasses a broader zone of interests than those pertinent to an MDIT.

Additionally, the fact that confidentiality requirements governing MDITs limit the use of any information they receive to child-welfare purposes further suggests that MDITs are not entitled to any and all information they may seek. An MDIT “shall assure that all information received and developed in connection with this article remains confidential.” W. Va. Code 49-4-410. And as used in Section 49-4-410, the term “confidential” means that the information may be disclosed to law-enforcement agencies and prosecutors only if there is “a need for that information in order to carry out [their] responsibilities under law to protect children from abuse and neglect.” W. Va. Code § 49-5-101(c)(1); *see also id.* § 49-4-410 (“For purposes of this section, the term ‘confidential’ shall be construed in accordance with article five of this chapter.”). This confidentiality requirement means that even if you were to receive initial CADs in your capacity as head of the Hardy County MDIT, that information could only be shared within your office to carry out your duties as a prosecuting attorney “to protect children from abuse and neglect.” Your office would not have the ability to use information obtained under Section 49-4-410 (or Section 49-4-402(d)) for other purposes, such as tracking probationers’ police contacts more generally.

Finally, a literal reading of the statute—one that would find an MDIT entitled to any information from any state, county, or local agency—could lead to absurd results. Under this broad interpretation, for example, an MDIT could demand that the West Virginia State Tax Department provide the tax returns of every state taxpayer, or that the Division of Motor Vehicles produce the driving records of every licensed driver in the county, and it would be no defense to object that the requests are vastly overbroad as compared to the MDIT’s legitimate purposes. To be sure, there is a significant difference between these hypothetical fishing expeditions and the purposes you have identified, and we have no doubt that your office seeks initial CADs in good faith and to advance your critical responsibilities as a prosecuting attorney. Yet the only basis in the statutory scheme for limiting an MDIT’s ability to request information is one grounded in the team’s child-welfare goals. Because it is “the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to [] absurdity,” Syl. pt. 3, *State v. Henning*, 238 W. Va. 193, 793 S.E.2d 843 (2016) (citation omitted), we conclude that a court would likely find that an MDIT’s authority under Section 49-4-410 is limited to requests reasonably related to its statutory purposes.

Second, you may also be entitled to certain CADs under West Virginia Code § 7-4-1(a) in your capacity as a prosecuting attorney. This statute provides that “[e]very public officer shall give the prosecuting attorney information regarding the commission of any criminal offense committed within his or her county.” W. Va. Code § 7-4-1(a). As with Section 49-4-410, the Supreme Court of Appeals has not addressed this statute’s scope. We lack sufficient facts to determine whether the head of the 911 center is a “public officer” for purposes of the statute, but if so, a reviewing court would very likely conclude that Section 7-4-1(a) grants a prosecuting attorney the right to receive the information it describes.

As we noted in a previous Opinion last year, “whether a specific government position qualifies as a public office” is a “‘simple but difficult’” question. W. Va. Op. Att’y Gen., 2018

WL 2947780, *1 (June 6, 2018) (quoting *Hartigan v. Bd. of Regents of W. Va. Univ.*, 49 W. Va. 14, 38 S.E. 698, 701 (1901)). There are five factors in the analysis: (1) “whether the position was created by law”; (2) “whether the position was designated an office”; (3) “whether the qualifications of the appointee have been prescribed”; (4) “whether the duties, tenure, salary, bond and oath have been prescribed or required”; and (5) “whether the one occupying the position has been constituted a representative of the sovereign.” Syl. pt. 4, *Cales v. Town of Meadow Bridge*, 239 W. Va. 288, 800 S.E.2d 874 (2017) (citation omitted). The totality of these five factors are considered when determining whether a position qualifies as a public office. *State ex rel. Carson v. Wood*, 154 W. Va. 397, 410, 175 S.E.2d 482, 490 (1970). Moreover, courts give special consideration to the specific statutory provision at issue. See *City of Bridgeport v. Matheny*, 223 W. Va. 445, 449, 675 S.E.2d 921, 925 (2009).

Here, factor one is satisfied because the 911 Center directorship is a position created by statute. See W. Va. Code § 24-6-5(d). The second factor cuts in the opposite direction because the statute does not designate the position as an office. *Id.* And factor three is likely satisfied because at least one qualification for the position is prescribed by statute. *Id.* § 24-6-5(d) (precluding the 911 Center director from having a felony conviction); *but cf. Matheny*, 223 W. Va. at 449, 675 S.E.2d at 925 (listing four statutory provisions setting police officer qualifications when examining this factor).

We lack necessary information, however, to determine if the remaining factors are satisfied—and thus cannot assess the collective weight of these factors to determine whether a 911 Center director is a public officer. As to factor four, the director’s tenure, salary, bond, and oath have not been prescribed by law, and we do not know if these issues are established elsewhere, such as in Hardy County’s plan for enhanced emergency telephone system. Indeed, publicly available sources suggest that these features may vary by county. We are similarly unable to determine if the 911 Center director “can bind or obligate” the sovereign as relevant to the fifth factor, *Cales*, 239 W. Va. at 298, 800 S.E.2d at 884, or if the 911 Center director is instead “subject to the supervision and policy direction” of others, *Christopher v. City of Fairmont*, 167 W. Va. 710, 714, 280 S.E.2d 284, 286 (1981).

Nevertheless, if additional facts support the conclusion that the 911 Center director is a public officer, Section 7-4-1(a) would provide a solid basis for you to request some initial CADs. Unlike the permissive language in Section 24-6-13(d), “shall” in Section 7-4-1(a) is mandatory. See Syl. pt. 5, *State v. Bostic*, 229 W. Va. 513, 729 S.E.2d 835 (2012) (holding that the word “shall” generally carries a mandatory obligation). Yet under the plain language of this provision, the statute is also limited in scope: the 911 Center is required to provide your office with initial CADs only to the extent that the initial CADs “regard[] the commission of any criminal offense committed within [Hardy County].” W. Va. Code § 7-4-1(a). Situations where a law-enforcement officer may have been dispatched but no criminal offense occurred are not covered by Section 7-4-1(a). Under your statutory authority as a prosecuting attorney and if the 911 Center director is a public officer, your office is thus entitled to the subset of initial CADs involving the commission of a crime.

In sum, the 911 Center has full authority to release all initial CADs to your office pursuant to your role as “the prosecuting attorney of a county.” W. Va. Code § 24-6-13(d). To the extent the 911 Center declines to exercise this authority, its discretion is not absolute. West Virginia Code Sections 49-4-410 and 49-4-402(d) entitle you to receive information from the 911 Center as the head of the Hardy County MDIT, provided that the request is consistent with the purposes for which the MDIT was created and not made pursuant to your broader prosecutorial functions. Similarly, Section 7-4-1(a) may entitle your office to initial CADs that involve the commission of a crime within Hardy County.

Sincerely,



Patrick Morrisey
Attorney General

Lindsay See
Solicitor General