

August 4, 1999

OPINION

OF Opinion No. 99-03

PATRICIA A. MADRID

Attorney General

BY: Elizabeth A. Glenn

Assistant Attorney General

TO: Darren P. White, Secretary

John W. Wheeler, Chief Counsel

Department of Public Safety

P.O. Box 1628

Santa Fe, New Mexico 87504-1628

QUESTIONS:

1. Are members of the public limited by the Sex Offender Registration and Notification Act ("SORN Act") to requesting information about one individual sex offender at a time?
2. Is the Department of Public Safety precluded by either the SORN Act or the Inspection of Public Records Act (NMSA 1978, §§ 14-2-1 to -12) ("IPRA") from posting all sex offender information made available by the SORN Act on a web site or other easily accessible public forum?

CONCLUSIONS:

1. No. Members of the public may make requests for available information about more than one particular sex offender, including blanket requests for information about all sex offenders who live in a certain area or in the state as a whole.
2. No. The Department of Public Safety may post all publicly available sex offender information on a web site or other public forum.

FACTS:

During the regular 1999 legislative session, the Sex Offender Registration Act, now the SORN Act, was amended to permit public access to information about certain sex offenders. See 1999 N.M. Laws, Ch. 19 (codified at NMSA 1978, Ch. 29, Art. 11A).[1] This opinion addresses questions that have arisen concerning the permissible means of making that information publicly available.

ANALYSIS:

## 1. Pertinent Provisions of the SORN Act.

The SORN Act requires a sex offender, as defined in the statute, residing or, if a nonresident, employed or attending school in New Mexico to register with the county sheriff for the county in which the sex offender resides, works or attends school. NMSA 1978, § 29-11A-4(A), (C). The Act requires a sex offender to provide specified information to the sheriff at the time of registration. § 29-11A-4(B), (D). Once registered, a sex offender must renew his or her registration annually. § 29-11A-4(H).

Each county sheriff is required to maintain a local registry of sex offenders in his jurisdiction, and to forward registration information obtained from sex offenders to the Department of Public Safety. § 29-11A-5(A), (B). The Department, in turn, is required to maintain a central registry of sex offenders registered under the SORN Act. § 29-11A-5(C).

Before it was amended, the SORN Act limited the dissemination of information about registered sex offenders to law enforcement agencies. The 1999 amendments repealed that limitation, 1999 N.M. Laws, ch. 19, § 9, and enacted a new section allowing public access to information about certain registered sex offenders. Id. § 8 ("Section 8"). Under Section 8(A), the county sheriff is required to forward registration information obtained from persons convicted of certain specified sex offenses to the district attorney for the judicial district in which the sex offender resides and, if applicable, to the chief law enforcement officer for the municipality in which the sex offender resides.[2]

Section 8 then goes on to provide:

B. A person who wants to obtain registration information regarding a sex offender described in Subsection A of this section may request that information from the:

- (1) county sheriff for the county in which the sex offender resides;
- (2) chief law enforcement officer for the municipality in which the sex offender resides;
- (3) district attorney for the judicial district in which the sex offender resides; or
- (4) secretary of public safety.

C. All requests for registration information regarding a sex offender described in Subsection A of this section are subject to the provisions of the Inspection of Public Records Act.

## 2. Blanket Requests for Sex Offender Registration Information.

The language in Section 8 allowing public access to registration information regarding "a sex offender" described in that section does not limit requests to information about one specific sex offender at a time, or preclude requests for registration information regarding all sex offenders who live in a particular area and similar general requests. Under long-standing codified rules of statutory construction, "unless the statute ... expressly provides otherwise, [or] the context of its language requires otherwise ... [u]se of the singular number includes the plural, and use of the plural number includes the singular." NMSA 1978, §§ 12-2A-1(B), 12-2A-5(A) (1997). See also *In re Forfeiture of One 1970 Ford Pickup Truck*, 113 N.M. 97, 98-99, 823 P.2d 339 (Ct. App. 1991) (construing the term "the owner" in a forfeiture statute to protect co-owners as well as sole owners was not contrary to the legislature's intent or the context of the statute); *New Mexico & S. Pac. R.R. Co. v. Madden*, 7 N.M. 215, 217-18, 34 P. 50 (1893) (relying, in part, on a territorial

statute providing that "[w]hen the singular appears, it can be construed as plural, and vice versa" to hold that a judgment referring to "the defendant" applied to two co-defendants).

The same amendments that added Section 8 to the SORN Act also amended the legislative purpose provision. See 1999 N.M. Laws, ch. 19, § 2. That provision now states, in pertinent part: "The purpose of the Sex Offender Registration and Notification Act is to assist law enforcement agencies' efforts to protect their communities by ... providing public access to information regarding certain registered sex offenders." NMSA 1978, § 29-11A-2(B)(4). In contrast to Section 8, this statement of the legislation's purpose uses the plural, "sex offenders," rather than the singular. The amendment to the purpose provision suggests that the legislature intended to facilitate, not restrict, the public's access to information about persons who have been convicted of certain sex offenses. This intent is consistent with and furthered by an interpretation of Section 8 permitting general or blanket requests for available information regarding sex offenders.

Furthermore, nothing in the SORN Act indicates an exception to the general rule of statutory construction described above. For example, no express provision states that the Act must be limited only to disclosing information about each sex offender one at a time. There is likewise no reason to find any legislative intent to limit the SORN Act to require an individual to request sex offender information only for each specific offender one at a time.

### 3. Posting Sex Offender Information in a Public Forum

For the same reasons discussed above, we conclude that neither the SORN Act nor the IPRA precludes the Department of Public Safety from posting all sex offender information on a web site or other easily accessible public forum. In effect, the SORN Act establishes that registration information submitted by certain sex offenders is public information<sup>[3]</sup> and specifies the agencies from which that information is available. The IPRA describes the right of the public to inspect public records (which would include information made public under the SORN Act), the duty of government agencies to provide access to public records, and procedures for inspecting and copying public records. The procedures specified in the IPRA are not exclusive, however, and do not preclude government agencies from making public information available or accessible to interested persons by other means.

Indeed, consistent with the IPRA, government should seek to the maximum extent practicable to "operate in the sunshine." Disclosure of the information at issue here is consistent with the general governmental policy of full disclosure to the public.

---

PATRICIA A. MADRID

Attorney General

STUART M. BLUESTONE

Deputy Attorney General

---

ALBERT J. LAMA

Assistant Attorney General

Director, Civil Division

ELIZABETH A. GLENN

Assistant Attorney General

[1] The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program Act, 42 U.S.C.A. § 14071, encourages states to adopt statutes, like the SORN Act, for the registration and community notification of convicted sex offenders by offering certain federal grants. The federal statute authorizes disclosure of the "information collected under a State registration program ... for any purpose permitted under the laws of the State." 42 U.S.C.A § 14071(e).

[2] Under Section 8, it appears that registration information is publicly available only with respect to certain sex offenders who reside in New Mexico, and not to sex offenders who reside in other states and are employed or go to school in New Mexico.

[3] This opinion is limited to the accessibility of registration information to the public under the SORN Act and the IPRA. Although raised in court proceedings outside of New Mexico, we have not researched and do not address any possible federal or state constitutional limitations on the release of sex offender registration information. Compare *State v. Myers*, 923 P.2d 1024 (Kan. 1996) (broad public disclosure provisions of Kansas Sex Offender Registration Act amounted to an unconstitutional ex post facto law when applied to sex offenders whose offenses were committed before the Act's effective date), cert. denied, 521 U.S. 1118 (1997) with *Spencer v. O'Connor*, 707 N.E.2d 1039 (Ind. Ct. App. 1999) (disagreeing with analysis in *Myers*, and concluding that availability of sex offender registry to anyone who requests it, except prisoners, and on the Internet did not violate the constitutional ex post facto prohibitions). We also do not address the extent to which federal statutes may limit, by preemption, public access to certain information obtained from registrants, such as social security numbers. See 42 U.S.C. § 405(c)(2)(C)(viii) (providing that social security numbers obtained or maintained pursuant to any law enacted on or after October 1, 1990 by "authorized persons," including state and local government agencies, officers and employees, shall be confidential).