E-911 personnel may access criminal justice information generated by VCIN/NCIC terminals per statutorily authorized agreement with local sheriff’s office, subject to requirements of State Police. Absent specific statutory authorization, sheriff may not enter into agreement binding his successors in office.

The Honorable Clarence E. Phillips  
Member, House of Delegates  
August 20, 20024

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issues Presented

You pose two questions as they relate to a proposed management control agreement between a county sheriff’s office and the local E-911 office. First, you ask whether nonlaw-enforcement personnel, such as E-911 dispatchers, may lawfully access criminal justice information generated from Virginia Criminal Information Network ("VCIN") or National Crime Information Center ("NCIC") terminals. Second, you ask whether a sheriff, as a constitutional officer, may enter into an agreement that binds future sheriffs.

Response

It is my opinion that nonlaw-enforcement personnel, such as E-911 dispatchers, are permitted access to criminal justice information generated from VCIN/NCIC terminals, provided the local E-911 office and the proposed agreement between the county sheriff’s office, the county board of supervisors, and the local E-911 office satisfy the requirements of § 19.2-389, and, further, that such access is authorized by the State Police. It is also my opinion that, absent specific statutory authorization, a sheriff may not enter into an agreement binding his successors in office.

Background

You relate that a county sheriff’s office is considering entering into a management control agreement with the county board of supervisors and local E-911 office for the provision of continuous emergency communications services for law-enforcement purposes. Under the agreement, the E-911 office would receive incoming calls and perform dispatching duties on behalf of the sheriff’s office. The agreement contains a provision allowing only the board of supervisors to terminate the agreement.

Applicable Statutory Provisions
Chapter 2 of Title 52 provides for the establishment within the Department of State Police of "a basic coordinating police communication system" under the control of the Superintendent of State Police, referred to as the Virginia Criminal Information Network (VCIN). Certain other departments or divisions of state government or localities are allowed access to the basic system. The Superintendent of State Police "may make and issue such orders, rules or regulations for the use of the system as in his discretion are necessary for efficient operation."

Section 19.2-389(A) authorizes certain designated agencies or individuals to receive criminal history record information. Specifically, § 19.2-389(A) provides:

Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants …;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

6. Individuals and agencies where authorized by court order or court rule.

Section 9.1-101 defines "criminal justice agency" as "a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so." Section 9.1-101 further defines "criminal history record information" as "records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom."

Discussion

Through computer terminals connected to the VCIN system, law-enforcement agencies and other authorized users may gain access to Virginia’s criminal history record information and information stored in the NCIC and various other data banks. The NCIC is a nationwide computerized criminal justice information system, maintained by the Federal Bureau of Investigation. Access to the NCIC system is controlled by federal law, and access to VCIN acts as a gateway to the information stored in the NCIC databanks.
Nonlaw-enforcement personnel, such as E-911 dispatchers, may access criminal history record information through VCIN terminals only if such personnel are employees of a "criminal justice agency," as defined in § 9.1-101, or the E-911 office enters into an appropriate agreement with a criminal justice agency. The E-911 office also may gain access to information contained in the VCIN if it is an agency "authorized by court order or court rule" under § 19.2-389(A)(6).

Under the facts presented, E-911 personnel do not qualify as employees of a criminal justice agency. The E-911 office clearly is neither "a court or any other governmental agency or subunit thereof" nor "any other agency or subunit thereof which performs criminal justice activities." The E-911 office does not perform criminal justice activities as its primary function. Since the E-911 dispatchers are nonlaw-enforcement personnel and the E-911 office does not meet the definition of "criminal justice agency" in § 9.1-101, the office and its personnel, by themselves, do not qualify for access to any criminal history record information in the VCIN system.

The E-911 personnel may access information in the VCIN system if the E-911 office has an agreement with a criminal justice agency. Since the county sheriff's office satisfies the statutory definition of "criminal justice agency," it may enter into a specific agreement with the local E-911 office governing access to information contained in the VCIN system. Section 19.2-389(A)(3) requires that such an agreement "shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data" and otherwise fulfill the requirements of the statute.

Any such agreement between the sheriff's and the E-911 offices must meet the requirements imposed by the Superintendent of State Police for access to information in the VCIN system. Under § 52-15, the Superintendent, or such member of the State Police as he shall designate, is charged with the maintenance and supervision of VCIN. Section 52-14 permits, but does not require, the Superintendent to make VCIN available for use by nonlaw-enforcement personnel. As such, the Superintendent may impose such restrictions on the access to, and supervision and monitoring of, VCIN terminals as deemed necessary to ensure the efficient operation of the system. Therefore, any agreement between the sheriff's and the E-911 offices for access to the VCIN system would be subject to the State Police allowing such access by nonlaw-enforcement personnel. Accordingly, the State Police should be consulted in advance with regard to any such agreement between the sheriff's and the E-911 offices.

You also ask whether a sheriff may enter into a contract, which extends beyond his term in office, thereby binding future sheriffs, and which may be terminated only by the local board of supervisors.

The office of sheriff is a constitutional office created pursuant to Article VII, § 4 of the Constitution of Virginia. The duties of a sheriff "shall be prescribed by general law or special act" of the General Assembly. While the powers and duties of a constitutional officer are those prescribed by statute, except as limited by law, the constitutional officer is free to discharge his prescribed powers and duties in a manner he deems appropriate. The Dillon Rule of strict construction, under which "local public bodies may exercise only those powers conferred expressly or by necessary implication," is, however, applicable to constitutional officers. Prior opinions of this Office consistently have concluded that a local governing body does not have the power or authority to take actions that irrevocably bind its
successors in office, unless such binding action is expressly authorized by statute. Similarly, absent specific statutory authorization, the sheriff, as a public officer, may not bind his successors in office by entering into such an agreement. Accordingly, while the county board of supervisors, the county sheriff and the county E-911 office may enter into an agreement outlining a relationship between them, such an agreement would not be binding on future sheriffs.

Conclusion

It is my opinion that nonlaw-enforcement personnel, such as E-911 dispatchers, may access criminal justice information generated from VCIN/NCIC terminals, provided the county E-911 office and the proposed agreement between the county sheriff’s office, the county board of supervisors, and the local E-911 office satisfy the requirements of § 19.2-389. and, further, that such access is authorized by the State Police. It is also my opinion that, absent specific statutory authorization, a sheriff may not enter into an agreement that binds his successors in office.

2Section 52-12 (Michie Repl. Vol. 1998).
4The basic system … may be made available for use by any department or division of the State government and by any county, city, town, railroad or other special police department lawfully maintained by any corporation in this Commonwealth as well as agencies of the federal government, subject to the … terms and conditions [listed in § 52-14(1)-(4)]." Section 52-14 (Michie Supp. 2001).
5Section 52-15.
7E.g., 28 U.S.C.A. § 534 (West 1993), which provides for the acquisition, preservation and exchange of information from the NCIC as follows:

"The Attorney General [of the United States] shall—

“(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

....

“(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions."
10See, e.g., op. no. 00-011 to Hon. Thomas D. Horne, 20th Jud. Cir. J. (Apr. 8, 2002), available at http://www.vaag.com/media%20center/Opinions/00-011.htm (concluding that commissioner of accounts is not criminal justice agency permitted access to criminal history records through VCIN, but circuit court is criminal justice agency); 1996 at 105, 106-07 (concluding that general district court is criminal justice agency, but public defender’s office is not); 1991 at 130, 133-34 (concluding that private police department is not court or criminal justice
agency permitted access to VCIN system).
11Section 52-15 authorizes the Superintendent of State Police to "make …
regulations for the use of the [VCIN] system as in his discretion are necessary for
efficient operation."
Coop.1996) ("The Department of State Police shall further approve of any
access to the Virginia Criminal Information Network (VCIN), in accordance with
State Police regulations governing the network.").
14See Hilton v. Amburgey, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); Old v.
15Op. no.: 01-114 to Hon. Robert J. Deeds, Williamsburg-James City Co. Sheriff
(Mar. 29, 2002), available at http://www.vaag.com/media%20center/Opinions/01-
114.htm; 01-121 to Hon. Barbara O. Carraway, Chesapeake City Treasurer (Apr.
4, 2002), available at http://www.vaag.com/media%20center/Opinions/01-
20Please note that the proposed agreement between the county board of
supervisors, the county sheriff, and the county E-911 office would not bind future
boards of supervisors, as the proposed agreement allows the county board of
supervisors to unilaterally terminate the agreement at any time.