



Publishing Arrest Booking Photographs for Profit

Senate Public Safety Committee

Interim Study

Sept. 25, 2023

Mug Shots Are Public Records

The inclusion of a picture within the term description has long been recognized in the law. As one learned jurist aptly noted, “[a] photograph is ... a pictured description.” *Ligon v. Allen*, 162 S.W. 536, 538 (Ky. Ct. App. 1914). We agree. In the case of a person’s physical appearance, a mug shot provides not only a description but one of the most accurate descriptions of an arrestee’s physical features.

Because a mug shot is one of the best physical descriptions of an arrestee, it is a type of record that must be disclosed.

51 O.S. 24 A.8(A)(1) (2011).

OKLAHOMA ATTORNEY GENERAL’S OPINION 12-022

Why Mug Shots Must Be Public

- Booking photographs are an important public record and should remain open to the public. They provide an accurate description of the person arrested and are beneficial to law enforcement and to the public.
- Law enforcement uses booking photographs to inform other law enforcement agencies and the public on exactly who they have apprehended. This allows others to accurately inform law enforcement if this person is wanted for other crimes or offenses before they post bail and are released.
- Booking photographs allow the public to truthfully address who is being arrested and see the condition of the person upon arrest. Have they suffered from brutality? What is the condition of the arrestee? This type of clarity will help to exonerate or expose the actions of law enforcement at the time of booking.

Why Mug Shots Must Be Public

Many members of the public have common names. Booking photographs allow the public to see which John Smith has been arrested. This type of clarity is essential and is helpful to all citizens who have common names.



Michael Brooks, 53, of Oklahoma City, was charged with animal cruelty after police found three hippos in his backyard that had inadequate shelter during the August blizzard.

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Why Mug Shots Must Be Public

- Booking photographs can and should serve as a deterrent to criminal behavior.
- Political figures understand this deterrent.



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- Government has no control over the handling of public records after they are released to the public. Many organizations access public records and use information to help citizens understand their government and the records it keeps about citizens.
- While government can expunge criminal court records, there are First Amendment limits on what government can force the public to do, or not do, with information. Government cannot force something to be “unpublished” from the internet, news archives, microfilm, and microfiche, etc. Nevertheless, persons who have their records legally expunged from government records mistakenly believe that gives them the authority to have old booking photographs expunged from published documents from years or decades ago. It does not.

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- There are many instances where law enforcement arrests a person who is not convicted due to efforts by the prosecutor's office, lack of proper evidence, or a plea agreement that keeps the person from having a conviction. This type of "only after conviction" policy would allow person arrested to escape scrutiny, hurts the efforts of law enforcement to arrest offenders, and allows prosecutors to have undue discretion on who is convicted (including family members, friends, law enforcement officers, prominent citizens, elected officials.) While government can expunge criminal court records, there are First Amendment limits on what government can force the public to do, or not do, with information. Government cannot force something to be "unpublished" from the internet, news archives, microfilm, and microfiche, etc. Nevertheless, persons who have their records legally expunged from government records mistakenly believe that gives them the authority to have old booking photographs expunged from published documents from years or decades ago. It does not.

Why Mug Shots Must Be Public

- Public records are not created only to serve a law enforcement purpose. All citizens should be treated equally by law enforcement. Public records serve the public and allow them to see the TRUTH about who is arrested.
- What would NOT SERVE a law enforcement purpose? Booking photos of fellow officers? Photos of people they want to harm and not of people they want to protect?