



HENRY McMASTER
ATTORNEY GENERAL

February 24, 2010

Buford S. Mabry, Jr., Chief Counsel
SC Department of Natural Resources
P. O. Box 167
Columbia, South Carolina 29202

Dear Buford:

In a letter to this office you questioned whether boating accident reports are now available under this State's Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., for public release. Specific reference was made to the provisions of S.C. Code Ann. § 50-21-130 which state:

(A) [i]t is the duty of the operator of a vessel involved in a collision, accident, or other casualty, if he can do so without serious danger to his own vessel, crew, or passengers, to render assistance as may be practical or necessary to persons affected by the collision, accident, or other casualty including personal injury or property damage and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. A person who fails to stop or to comply with the requirements of this section, is guilty...(as prescribed)...

...(C) In the case of a reportable accident, the operator or owner of any vessel involved shall file a full description of the accident with the...(South Carolina Department of Natural Resources)...and provide any information the department may require when requested as part of the investigation within forty-eight hours of the accident. The owner or operator of a watercraft involved must furnish his name, address, and identification of his watercraft in writing to any person injured or the owner of any property damaged in the accident as soon as possible after the collision. In the event an accident results in death, loss of consciousness, or serious bodily injury, the owner or operator immediately shall notify the department.

(D) The accident report must be without prejudice, and must be for the information of the department. However, a person alleged to have sustained injury or property damage or alleged to have caused injury or property damage, their attorney, personal representative, or an insurer may obtain a copy of the report. The fact the report has been made is admissible solely to show compliance with this section, but no report or any part or statement contained in the report is admissible as evidence in a civil trial. An insured alleged to be responsible for the accident cannot be reimbursed for property damages until the report is filed. (emphasis added).

Formerly, prior to its amendment, subsection (D) stated that

[t]he report shall be without prejudice, shall be for the information of the department, and shall not be open to public inspection. Provided, however, the report shall be made available to any person injured or damaged or to any person alleged to have caused injury or damage in the accident, or to his attorney. The fact that such report has been made shall be admissible in evidence solely to show compliance with this section but no such report nor any part thereof nor any statement contained therein shall be admissible as evidence for any purpose in any civil trial. An insured may not be reimbursed for property lost until he files a report in compliance with this section. (emphasis added).

Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth in an opinion of this office dated June 9, 2009,

the Legislature clearly expressed the purposes of the South Carolina Freedom of Information Act (“FOIA”) in Section 30-4-15. This statute provides as follows:

[t]he General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so

that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Moreover, our Supreme Court in Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E.2d 474 (2006) stated that “[t]he purpose of FOIA is to protect the public by providing a mechanism for the disclosure of information by public bodies.” With regard to the interpretation of the statutes contained in FOIA, our courts recognize “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” New York Times Co. v. Spartanburg County Sch. Dist. No. 7, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007).

An opinion of this office dated May 22, 2001 stated that “...the rule of thumb to which this Office has consistently adhered with respect to any Freedom of Information Act question is: when in doubt, disclose.”

In several opinions, this office when construing the Freedom of Information Act has emphasized the General Assembly's expressed policy of openness in government as articulated in Section 30-4-15. For example, in an opinion dated November 6, 2007, we reiterated this emphasis as follows:

[a]s with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to give effect to the legislature's intent. Bankers' Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. News & Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 29 N.C. App. 37, 223 S.E.2d 580 (1976). See also, Evening Post Publishing Co., v. City of North Charleston, 363 S.E. 452, 611 S.E.2d 496 (2005) [FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government]; Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001).

["FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature."].

As noted in another opinion of our office dated December 23, 2008 quoting decisions of this State's Supreme Court, "South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government." Campbell v. Marion County Hospital District, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); Quality Towing, supra."

While former subsection (D) of Section 50-21-130(D) provided that an accident report filed "shall not be open to public inspection", the amended subsection (D) omits such language. Other statutes allow for the confidentiality of certain law enforcement related records. For instance, pursuant to another provision of this State's Freedom of Information Act, Section 30-4-40(a),

[a] public body may but is not required to exempt from disclosure the following information:

...(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

- (A) disclosing identity of informants not otherwise known;
- (B) the premature release of information to be used in a prospective law enforcement action;
- (C) disclosing investigatory techniques not otherwise known outside the government;
- (D) by endangering the life, health, or property of any person; or
- (E) disclosing the contents of any intercepted wire, oral, or electronic communications not otherwise disclosed during a trial. (emphasis added).

Thus, certain public records associated with law enforcement agencies may be kept confidential and are not eligible for release to the public. However, consistent with the deletion of the provision in former subsection (D) of Section 50-21-130(D) that an accident report filed "shall not be open to public inspection", this State's Family Private Protection Act, S.C. Code Ann. §§ 30-2-10 et seq., which primarily provides for the establishment of privacy policies and procedures required of all state entities, in Section 30-2-30 specifically exempts from the definition of "personal information" "information about boating accidents."

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In an opinion dated April 25, 1990, the Texas Attorney General referenced that while a particular statute "...requires the reports to be forwarded to specific state officials, ...nothing in its language removes them from the Open Records Act or prohibits their disclosure to other persons." Similarly, in the opinion of this office, with the deletion of the provision stating that a filed accident report "shall not be open to public inspection", there does not exist any basis for preventing boating accident reports filed with DNR from being available under this State's Freedom of Information Act for public release. Therefore, in the opinion of this office, such are disclosable.

If there are any questions, please advise.

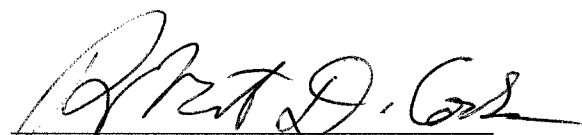
Very truly yours,

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