



HENRY McMASTER
ATTORNEY GENERAL

July 19, 2010

William McBee Smith, Esquire
Assistant County Attorney, Spartanburg County
218 East Henry Street
Spartanburg, South Carolina 29306

Dear Mr. Smith:

In a letter to this office you questioned whether copies of arrest warrants and incident reports maintained at the Spartanburg County Detention Center must be made available for walk-in inspection by the media. You referenced that the original documents are always available for walk-in inspection at the circuit court and various magistrate and municipal courts depending on the criminal offense.

As referenced in a prior opinion of this office dated December 23, 2008,

[t]he Freedom of Information Act (FOIA) was adopted in its present form by Act No. 593, 1978 Acts and Joint Resolutions. A number of amendments have been made to FOIA over the years...(See S.C. Code Ann. §§ 30-4-10 et seq.)... The Act's preamble best expresses both the Legislature's intent in enacting the statute, as well as the public policy underlying it. The preamble to FOIA set forth in S.C. Code Ann., Section 30-4-15, 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 fully report the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

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On numerous occasions, in construing FOIA, we have emphasized the Legislature's expressed policy of openness in government, as articulated in § 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 our courts have stressed, "[t]he essential purpose of the FOIA is to protect the public from secret government activity. 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.

Generally, pursuant to Section 30-4-30 "(a) any person has a right to inspect or copy any public record of a public body except as provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." The term "public body" is defined by Section 30-4-20(a) as

...any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or

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governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

Consistent with such, in the opinion of this office, a jail or detention center would be considered a “public body” for purposes of the FOIA. See also: Burton v. York Co. Sheriff’s Department, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004) (a sheriff’s office is deemed a “public body” pursuant to the FOIA). Support for such conclusion is also found in the determination by the State Supreme Court that a jail book and log are public information. In Florence Morning News, Inc. v. Building Comm’n of the City and County of Florence, 265 S.C. 389, 218 S.E.2d 881 (1975), the court affirmed the lower court’s finding that the jail book was a public record within the meaning of the Freedom of Information Act and further determined that any interested person had a statutory right to inspect and copy the original jail book rather than a copy of the daily entries.

The public’s access to law enforcement incident reports is addressed by the FOIA. Section 30-4-50(A) provides that certain categories of records

...are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40 and 30-4-70 of this chapter ...[including]...(8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

Moreover, the FOIA references how incident reports are to be made available to the public. Section 30-4-30(d) expressly states as follows:

[t]he following records of a public body must be made available for public inspection and copying during the hours of operations of the public body without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person: ...

(2) all reports identified in Section 30-4-50(A) (8) for at least the fourteen-day period before the current day

The December 23, 2008 opinion referenced above also determined that

...it is our opinion that the General Assembly intended § 30-4-30(d) of the FOIA to require reasonable public access at night, on weekends and during legal holidays to Sheriffs' incident reports. A Sheriff's Department functions 24 hours a day and 7 days a week. The Sheriff does not close for holidays. While South Carolina's FOIA does not expressly address "24-7" access to incident reports, the statute does mandate far more than the public being given access to these records only during traditional "9-5" business hours. Access must be given "during the hours of operation of the public body" and, in the case of the Sheriff's Office, that Office operates around the clock....[W]e interpret FOIA as sufficiently broad to require reasonable public access to Sheriffs' incident reports at night, on weekends and during holidays.

An opinion of this office dated January 24, 1990 determined that "[a]rrest warrants have been deemed disclosable under the Freedom of Information Act." An opinion of this office dated January 10, 2002 referencing the prior January 24, 1990 opinion stated that "[a]rrest warrants, once served, are generally public information..."¹ That opinion further concluded that "[a]s an arrest warrant which has been served is public information and the information that is the subject of the warrant is public information, it makes no sense that the arrest warrant itself is banned from publication prior to service on the offender."²

Of course, certain information is exempted from disclosure by statutes such as Sections 30-4-20, 30-4-40, 30-4-70, or others as noted above. As noted in the previously referenced January 24, 1990 opinion of this office,

¹That opinion further stated that "...as incident reports are specifically declared public information by the South Carolina Freedom of Information Act, the information contained therein does not lose its public status simply by transferring it to an arrest warrant."

²That opinion further concluded that

...the publishing of outstanding arrest warrants on the internet would not violate an individual's right to privacy as provided for in the South Carolina Constitution.

...Section 30-4-40(a)(2) exempts from disclosure such information which is “of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy....” Determinations must be made on a case-by-case basis that personal privacy would be unreasonably invaded by a particular disclosure. Additionally, the Freedom of Information Act exempts from disclosure those matters “specifically exempted from disclosure by statute or law.” Section 30-4-40(a)(4).

Furthermore, pursuant to Section 30-4-40(a)(3), also exempt from disclosure are

[r]ecords 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 any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

Consistent with such, in the opinion of this office, copies of arrest warrants and incident reports maintained at the Spartanburg County Detention Center must be made available for walk-in inspection by the media. As to any concerns regarding redactions, in the opinion of this office, any necessary redactions should be accomplished by the arresting law enforcement agency or any law enforcement official with supervisory authority over a particular case prior to transferring the arrest warrants and incident reports to the Detention Center. See: Burton, supra, as recognition of the right to privacy and the right to an exemption for such purposes. A prior opinion of this office dated July 16, 1987 recognized that “the appropriate agency” would be the proper body to make any determination as to whether information should be released under the FOIA. That opinion stated that “[t]he appropriate agency would be able to offer the necessary guidance to make certain that the appropriate information is released.”³ Therefore, the arresting law enforcement agency or law enforcement official with supervisory authority over a particular case should make any necessary redactions prior to forwarding any arrest warrants and incident reports to the Detention Center.

³An opinion of this office dated November 4, 1983 stated that “[t]here is no provision in the Freedom of Information Act for exemption from disclosure of otherwise disclosable information by one agency merely because the identical information is available from another agency.”

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With kind regards, I am,

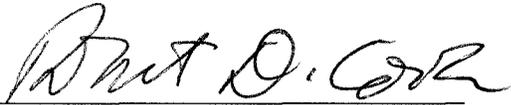
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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