



ALAN WILSON
ATTORNEY GENERAL

April 29, 2011

The Honorable Luke A. Rankin
South Carolina Senate, District 33
Post Office Box 142
Columbia, SC 29202

Dear Senator Rankin:

We are in receipt of your letter requesting an opinion of this Office regarding a constituent's request to the City of Myrtle Beach pursuant to the Freedom of Information Act ("FOIA") concerning the "Gayden Cabana Project." According to your letter, the constituent's FOIA requests to the City have not been answered. You request an opinion as to whether your constituent should pursue the matter further with the City of Myrtle Beach as well as information regarding what recourse a citizen may have as a result of the City's apparent non-response to the FOIA request.

Law/Analysis

The South Carolina Freedom of Information Act provides, in pertinent part, that "[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. CODE ANN. § 30-4-30(a). The City of Myrtle Beach is clearly a "public body" pursuant to S.C. CODE ANN. § 30-4-20(a). Further, § 30-4-20(c) of the South Carolina Code defines a public record as including "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body." It appears that the documents requested by your constituent related to the cabana project would fall under this definition and would likely not be exempt under § 30-4-40.¹ However, as we noted in a prior opinion dated July 9, 2010,

without further information about the documents held by the City, we are unable to conclusively state that this information is required to be disclosed under FOIA. This Office, unlike a court, is without jurisdiction to investigate and determine factual

¹ However, we note that one of the FOIA requests from your constituent asks for the City attorney's "legal opinion." § 30-4-40(7) specifically exempts "[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships." Accordingly, this specific request is likely exempt.

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issues. Op. S.C. Att’y Gen., April 9, 2010. As such, we cannot make conclusive findings as to the disclosure of the information sought from the City by your constituent. However, as a rule of thumb, this Office consistently advises public bodies with regard to FOIA that when in doubt, the body should disclose the information requested. Op. S.C. Att’y Gen., August 14, 2008.

With regard to a citizen’s recourse as a result of non-response to a FOIA request, S.C. CODE ANN. § 30-4-30(c) provides:

Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

However, the exemptions provided by S.C. CODE ANN. § 30-4-40 cannot be waived by the public body’s failure to respond within fifteen days. Litchfield Plantation Co., Inc. v. Georgetown County Water and Sewer Dist., 314 S.C. 30, 443 S.E.2d 574 (1994). Further, pursuant to S.C. CODE ANN. § 30-4-100, your constituent may apply to the circuit court for a declaratory judgment and injunctive relief to enforce the provisions of FOIA. However, the application must be made no later than one year following the date on which the alleged violation occurred. Id. Moreover, “[t]he court may order equitable relief as it considers appropriate” Id. Should your constituent seek relief and prevail, he may be awarded reasonable attorney fees and other costs of litigation. Id. Furthermore, in accordance with S.C. CODE ANN. § 30-4-110, a willful violation of FOIA is a misdemeanor.

Conclusion

The City of Myrtle Beach is clearly a “public body” as defined by FOIA and the majority of the documents requested by your constituent appear to be public records subject to the disclosure requirements of FOIA. However, as noted above, this Office cannot make conclusive findings as to the disclosure of the information sought by your constituent because we cannot investigate or determine factual issues. However, as a general rule, this Office consistently advises public bodies that, for purposes of FOIA, when in doubt, the body should disclose the information requested. Further, a public body, upon a written request for records made pursuant to FOIA, shall, within fifteen days, notify the person making the request of its determination as to availability and reasons therefore. Should a public body fail to do so, any citizen may apply to the circuit court for either or

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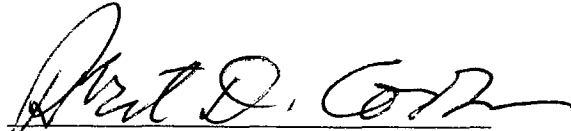
both a declaratory judgment and injunctive relief so long as relief is sought no longer than a year after the alleged violation occurred. For a prevailing party, FOIA allows for the possibility of attorneys' fees and costs. Finally, a willful violation of the Act is a misdemeanor. Accordingly, your constituent may seek the above described relief assuming, as it appears from your letter and attachments, that his FOIA requests were not answered within the prescribed time period.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth Ann L. Felder".

ElizabethAnn L. Felder
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, reading "Robert D. Cook".

Robert D. Cook
Deputy Attorney General