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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 22, 2001

The Honorable Daniel T. Cooper
Member, House of Representatives
361 Browning Road
Piedmont, South Carolina 29673

RE: Informal Opinion

Dear Representative Cooper:

By your letter of August 6, 2001, you have requested an opinion of this Office concerning the release of information obtained in business license applications pursuant to the Freedom of Information Act ("FOIA"). You have enclosed a letter from a constituent who has requested from the City of Anderson a list of the "City building permits with the amounts, and business license fees paid for non-resident builders." In an effort to learn more about this matter, I contacted officials with the City of Anderson, who have further clarified what information has been provided to this constituent and what information they have not released under FOIA. My understanding is that the City has provided him with the builders' names, addresses, and numbers of permits issued. The City has also verified that each contractor has purchased a business license and paid for additional permits when necessary. The City has not released the actual amount paid by each contractor for the business license.

South Carolina's Freedom of Information Act is codified at Section 30-4-10 *et seq.* of the South Carolina Code of Laws. The Act attempts 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." S.C. CODE ANN. §30-4-15. In light of this mandate, this Office has strongly advised interpretations of the Act that effectuate disclosure. See OP. ATTY. GEN. Apr. 11, 1988; OP. ATTY. GEN. Mar. 31, 1994. However, the provisions of the FOIA, as with any statute, must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1991).

Request Letter

Under FOIA, records of a public body are required to be made available to the public. There are exceptions, however, to this rule. Section 30-4-40 reads, in part:

(a) A public body may but is not required to exempt from disclosure the following information:

...
(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. *Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses ...*

(Emphasis added).

Under the plain language of the statute, information contained in the business license that is based upon gross receipts of the applicant is not required to be disclosed to the public under the Freedom of Information Act. From my understanding from the City of Anderson, almost all information in the business license application has been released to the constituent. The remaining undisclosed information is the amount actually paid by the licensee for the license. This amount is determined by the gross receipts of the applicant. Thus, the public body would not be required to disclose the actual amount paid by the licensee because that information falls within Section 30-4-40's exemptions from disclosure.

This Office has advised in the past that the exemptions provision of Section 30-4-40 is exercisable at the option of the public body and is not mandatory. See OP. ATTY. GEN. Oct. 7, 1998. See also South Carolina Tax Com'n v. Gaston Copper Recycling Corp. 316 S.C. 163, 447 S.E.2d 843 (S.C. 1994). However, another provision of law directly restricts the release of certain information contained in business license applications. Section 6-1-120 states, in part:

(A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner *the financial information, or other information indicative of units of goods or services sold, provided by a taxpayer included in a report, tax return, or application* required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

- (1) tax authorized under Article 5 or Article 7;
- (2) business license tax authorized under Section 4-9-30(12) or Section 5-7-30;
- (3) fee the measure of which is:
 - (a) gross proceeds of sales of goods or services; or
 - (b) paid admissions to a place of amusement.

Representative Cooper
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(Emphasis added). Furthermore, a knowing violation of this section constitutes a misdemeanor and the offender may be subject to penalties of a fine or imprisonment, or both, and dismissal from office. This provision explicitly prohibits the release of financial information contained in an application for a business license. This protected information would include the amount paid for the license, as derived from the gross receipts of the applicant.

Although, this Office typically advises all courses of action that encourage disclosure, the statutes leave little room for doubt about whether the City of Anderson should release the amount paid for the license. Given the permissible exemptions for information based on gross receipts found in FOIA and the implications of improperly releasing financial information contained in business license applications pursuant to Section 6-1-120, we would advise the City to redact that particular information from records released to the public. As an aside, whether the protected information is ultimately available or computable from another source is a question of fact beyond the scope of an opinion of this Office to address.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General