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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 10, 2001

The Honorable Mark Struthers McBride
Mayor, City of Myrtle Beach
Post Office Box 2468
Myrtle Beach, South Carolina

RE: Informal Opinion

Dear Mayor McBride:

By your letter of January 3, 2001, you have requested an opinion of this Office concerning the Freedom of Information Act. By way of background you inform us that you requested an arrest record concerning a city resident from the Myrtle Beach Police Department. You believe that you were provided with an incomplete record because you know that the individual was arrested on a D.U.I. charge in 1994, was acquitted in 1995, but never expunged his records nor obtained a court order to seal the records. Specifically you ask if the Freedom of Information Act requires disclosure of the full arrest record in the absence of an expungement or court order.

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 in numerous opinions interpretations of the Act that effectuate disclosure. See OP. ATTY. GEN. Apr. 11, 1988; OP. ATTY. GEN. Mar. 31, 1994.

Concerning the availability of law enforcement records, the Act both specifically requires disclosure and specifically exempts from disclosure certain kinds of information. For example, in addition to the general requirement that public records be available for inspection and copying, the Act requires immediate access to reports which disclose the nature, substance, and location of any alleged crime reported as having been committed in the fourteen days prior to the request and documents identifying persons confined in a jail, detention center, or prison for the preceding three months. S.C. CODE ANN. § 30-4-30(d)(2) and (3). Exempt from disclosure, however, are records of law enforcement agencies that would endanger the life of another person, disclose the identity of

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an informant, prematurely release information on an investigation, or disclose investigatory techniques not known outside the government. S.C. CODE ANN. § 30-4-40(a)(3). Also included in the Act's exemptions are "matters specifically exempted from disclosure by statute or law." S.C. CODE ANN. § 30-4-40 (a)(4). And of course, records expunged by order of the court pursuant to the statutory procedures outlined in S.C. Code § 22-5-910 are also exempt. See OP. ATTY. GEN. July 8, 1996.

Within these parameters, this Office has advised disclosure of several kinds of law enforcement records. Arrest warrants have been deemed disclosable under the Freedom of Information Act. See, for example, OPS. ATTY. GEN. Aug. 1, 1989; July 12, 1983; Apr. 4, 1983. This Office has advised in these opinions that information contained in an arrest warrant which would be exempted from disclosure by statutes such as Sections 30-4-40, 30-4-70, or others, may be deleted prior to disclosure. The basis for disclosure of arrest warrants generally is that an "arrest warrant becomes a matter of public record upon its being signed and served on the person charged under the warrant." OP. ATTY. GEN. July 12, 1983. Similarly, incident reports and jail logs must be disclosed, as well. See OP. ATTY. GEN. Jan 24. 1990. Finally, criminal convictions and sentences are also matters of public record specifically subject to disclosure under the Act. See id.

Based upon a reading of these prior opinions, you may have concluded that in the absence of an expungement order, records concerning the prior history of a criminal defendant would be disclosed. This may be generally true. In the circumstances you describe, however, the particular records you attempted to obtain fall within an exception to the general rule. Section 17-1-40 of the Code of Laws of South Carolina states:

> Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency.

The statute declares that if a defendant has been acquitted of a charge, a law enforcement agency cannot retain records pertaining to that charge. Furthermore, nothing in this provision requires the obtainment of a court order before the agencies purge the record; they are charged with this duty in the statute. Under the Freedom of Information Act's exemptions, "matters specifically exempted from disclosure by statute or law" are not required to be disclosed. See S.C. CODE ANN. § 30-4-40 (a)(4). This statute prohibits disclosure when the individual has been acquitted of the charge. Thus, the law enforcement agency should not disclose the information concerning the particular arrest pursuant to a Freedom of Information Act request.

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