

See Summary

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

October 6, 1993

The Honorable D. N. Holt, Jr.
Chairman, Charleston County Legislative Delegation
2 Courthouse Square, Room 307
Charleston, South Carolina 29401

Dear Representative Holt:

By your letter of September 9, 1993, you have asked several questions relating to the availability of information on applicants for appointment or election to boards or commissions over which the Charleston County Legislative Delegation has appointment, election, or recommending authority, pursuant to the Freedom of Information Act.

A starting point for the present response would be pertinent points from an opinion dated October 28, 1988, as to applications filed with the Delegation by prospective appointees. In response to the question, "Would the information on the above-referenced form become available under the Freedom of Information Act?" we responded:

This question is difficult to answer in the abstract. Should a request be received for the form on a particular appointee, it would be necessary to examine the form at that time to determine what information could be disclosed. Such determination would be within the purview of the custodian of the form.

Certain information may most probably be released including: name of applicant; residence address ...; business address ...; and military service information On the other hand, release of social security numbers should be carefully considered, in light of the federal Privacy Act. ... Each form must be examined individually, prior to release, to determine what information is or is not subject to disclosure. ...

The Honorable D. N. Holt, Jr.

Page 2

October 6, 1993

A copy of the complete opinion is enclosed, as well as an opinion dated November 14, 1989, which will be discussed herein. With this background in mind, your questions will be examined individually.

Question 1

Are applications received from prospective appointees, by the Delegation, considered public records to be made available under the Freedom of Information Act?

Based on the definition of "public record" contained in S.C. Code Ann. § 30-4-20(c), as quoted in the opinion of November 14, 1989, and on the reasoning in the two enclosed opinions, the response to your question is that such applications are considered public records. The guidelines for making information available from such applications are found in the two opinions. That the request for information under the Freedom of Information Act comes from the media, a board or commission, or the public generally has no bearing on disclosability. That the Delegation only recommends an appointee, with the Governor exercising appointment authority, has no bearing on disclosability. The fact that the Delegation, as a public body, has public records in its possession, triggers applicability of the Freedom of Information Act and causes the various statutes and guidelines, discussed in the enclosed opinions, to come into play and records to be disclosed insofar as is possible.

Question 2

Should just the names of prospective appointees, with no additional information, be released to the media and anyone else who asks?

This question too is answered by the two enclosed opinions. Each individual application should be examined to determine whether information therein would be exempted from disclosure. Any information not so exempted must be disclosed; indeed, the Freedom of Information Act does not create a duty not to disclose, so that even exempted information may be disclosed if the public body so chooses (unless, for example, certain information is made confidential by a particular statute). Of course, if only names of applicants are requested under the Act, it would not be necessary to release more information, though such release would certainly not be prohibited.

The Honorable D. N. Holt, Jr.

Page 3

October 6, 1993

Question 3

Is it considered that information is being withheld if even the names of the applicants are withheld from the media and general inquiries if they are in fact being withheld only until the deadline for filing the application for appointment, at which time the Delegation would release all names?

Section 30-4-30(c) provides that a public body has fifteen "working" days to respond to a written request made pursuant to the Freedom of Information Act; if written notification is not mailed or personally delivered to the requestor in that time frame, the request is deemed to have been granted and the requested record must be furnished or made available for inspection or copying. It is conceivable that, in appointment matters, information as to prospective appointees could be requested outside the fifteen-day time frame such that the application period has not closed by the end of the fifteen-day response period; the Act does not contemplate this situation.

The Act, at least technically, appears to require that the information requested be disclosed as is contemplated by § 30-4-30(c). It might be possible, in a given situation, to discuss the matter with the requestor and work out a schedule for disclosure; the Delegation, as a public body, must nevertheless be mindful of the statutory obligation imposed by the Act. Perhaps corrective legislation would be helpful to clarify the matter if this circumstance poses a real problem or hardship to the appointment process.

Question 4

If a position on a particular board is usually one that is filled by an election, but because of a resignation or death is to be appointed by the Legislative Delegation, is information on an appointment application considered to be a matter of "public record" to be released to anyone who wants to see the information on the application?

The Act makes no distinction, in the definition of "public record" in § 30-4-20(c), as to a public record (i.e., application) of one seeking appointment as to one seeking election. Each would be disclosable, considering the factors set forth in the enclosed opinions. Who may be a requestor is discussed in response to question 2, above.

The Honorable D. N. Holt, Jr.

Page 4

October 6, 1993

Question 5

Is there just an obligation to release the names of the applicants at the time they are requested, or can even the names be withheld until the deadline for filing the application for appointment?

This question is covered by the response to the third question.

We trust that the foregoing has sufficiently responded to your inquiry. Please advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions