

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

September 30, 1993

The Honorable William C. Mescher
Senator, District No. 37
Post Office Box 1
Pinopolis, South Carolina 29469

Dear Senator Mescher:

By your letter of August 27, 1993, you referred to S.C. Code Ann. § 30-4-50, which in part specifically declares the names, sex, race, title, and dates of employment of all officers and employees of public bodies, to be public information, and also to S.C. Op. Atty. Gen. No. 4354, which concluded that the mailing list for the Department of Agriculture publication "The Market Bulletin" would be public information. You then asked four questions related thereto; each question will be discussed separately as follows.

Question 1

Must a state agency or other government entity furnish a listing of its employees to: (a) a member of the public, or (b) a candidate for an elected public office, or (c) a member of the General Assembly?

First, the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq., applies to "public bodies" as that term is defined in § 30-4-20(a):

"Public body" means any department of the State, any state board, commission, agency, and authority, any public or 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,

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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. ...

Thus, if the entity in question comes within the definition of "public body," the Freedom of Information Act is applicable.

As to disclosure of information about public officers and employees, § 30-4-50 provides in relevant part:

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Section 30-4-20, 30-4-40, and 30-4-70 of this chapter.

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;

Assuming that one of the listed limitations does not restrict access to the enumerated information, the names, race, sex, title, and dates of employment of employees and officers of public bodies would be disclosable.

Section 30-4-30(a) states in 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...." The term "person" is defined by § 30-4-20(b) to include "any individual, corporation, partnership, firm, organization or association." The Freedom of Information Act makes no distinction between members of the public, candidates for elected public office, members of the legislature, or other categories of requestors as to who may be able to inspect or copy public records of public bodies.¹

¹As to fees which may be charged under the Act, § 30-4-30(b) does distinguish between others and members of the General Assembly when the latter make a request relating to legislative duties.

Question 2

If a state agency or other public entity has a publication mailed to its employees or other persons, must the entity furnish its mailing list to any or all of those listed in a, b, and c, above?

As you are aware, by Opinion No. 4354 dated May 25, 1976 (decided under the old freedom of information law), this Office concluded that the mailing list of "The Market Bulletin" would be public information. By an opinion dated January 7, 1981, this Office examined whether the mailing list of a publication of the Department of Archives and History, "The South Carolina State Gazette," would be public information; the various statutory considerations were discussed therein.² Finally, an opinion dated April 26, 1983 examined legislation which would essentially make confidential the subscription list of "South Carolina Wildlife Magazine" unless the Wildlife and Marine Resources Commission should choose to make it public. Copies of these opinions are enclosed herewith.

The public body would be required, as for any request for public records, to begin with the premise that subscription list would be a public record and disclosable unless an exception applied, as in the opinion of January 7, 1981. It would also be necessary to consider whether a state law might protect the information sought. Whether disclosure of the list would constitute an unreasonable invasion of personal privacy, so that the information would be protected by § 30-4-40(a)(2), is a determination that the public body would be required to make. If the public body determines that the mailing list would be public information, the categories of requestors listed in your first question would not be a consideration, as stated in our first response.

Question 3

If such lists must be made public, must the home addresses of the receiving parties be included as a part of the mailing list?

As stated in response to question 2, the public body must determine whether the list(s) would be public information. As to disclosure of employees' and public officers' home addresses, this Office stated in Op. Atty. Gen. No. 87-69 dated July 16, 1987, generally such are disclosable:

²The "public interest" exception which is cited therein was repealed in 1987 and cannot be used at present to exempt public records from disclosure.

Residence addresses ... have been deemed disclosable since the same are often ascertainable by reference to many publicly attainable books and records. [Cites omitted.]

Caution should be exercised in disclosing [home addresses and telephone numbers of state employees]. Section 30-4-40(a)(2) exempts from disclosure "[i]nformation of a personal nature where the disclosure thereof would constitute unreasonable invasion of personal privacy ..." As indicated by the Michigan State Employees Association decision and others cited therein, such disclosure of residence address has not been deemed an invasion of privacy. However, if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, a determination as to disclosure must be made on a case-by-case basis

The mailing lists of various publications would, we assume, include subscribers' names and mailing addresses (which, must be noted, might not be identical to their residence addresses). The same considerations discussed in the opinion of January 7, 1981 would be applicable here (other than the "public interest" exception as previously discussed). As a practical matter, releasing names of subscribers without addresses would probably render the information meaningless.

As we have suggested in many previous opinions, the public body faced with the issue of disclosure should weigh the need for privacy against the public's right to access the public information. Op. Atty. Gen. No. 84-53 dated May 10, 1984. The balance should be tilted in favor of disclosure. Id.

Question 4

If such lists must be made public, are there any statutes or other prohibition against the lists being used in a political campaign?

Several issues are raised herein. Motive of a requestor in seeking information under the Freedom of Information Act is generally not a consideration, so that in most instances information gained from public records may be used commercially. See the enclosed opinions and others such as Op. Atty. Gen. No. 85-63 dated June 26, 1985. Certain

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exceptions as to commercial solicitation using information gained from public records are found in § 30-4-50(B):

No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

Other than this statute, the Freedom of Information Act does not limit how a requestor may use public information obtained pursuant to the Act.

Because your question involves campaign practices, you may wish to confer with the State Ethics Commission and/or the State Election Commission about the practice, to determine whether any ethics or election laws should be considered.

We trust that the foregoing has been as responsive as is possible under the circumstances. Please advise if you have additional questions or require clarification.

With kindest regards, I am

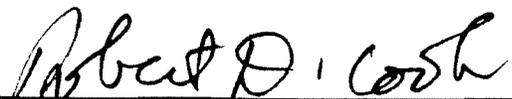
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions