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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 10, 1995

Edgar Dyer, University Counsel
Coastal Carolina University
P. O. Box 1954
Conway, South Carolina 29526

Dear Mr. Dyer:

You have stated that the President of Coastal Carolina University desires "to release [the] salary information" of its employees. You note that some employees whose "salaries" are below $50,000 annually have a total compensation from the University of above $50,000 "due to pay for extra teaching and other additional duties, such as coaching an athletic team." You present the following typical situation:

> For example: suppose a professor is paid $45,000 as his/her annual salary for teaching in the fall and spring semesters. This professor is also paid $6,750 for teaching two courses in summer school, but this is not guaranteed every summer. His/her total pay from the University is $51,750 in that year. Can this exact total compensation be released, since, it exceeds $50,000, or could only his/her "salary" range of $42,000 - $46,000 be released?
>
> For purposes of the Opinion, I think the question is: Does the word "compensation" in S. C. Code Section 30-4-40(6) mean "total 12-month pay" or "contracted salary"?

South Carolina's Freedom of Information Act was adopted in present form by Act No. 593, 1978 Acts and Joint Resolutions, as amended by Act No. 118, 1987 Acts and Joint Resolutions. The Act's preamble best expresses both the Legislature's intent in enacting the statute, as well as the public policy underlying it. Section 30-4-15 provides:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and

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> public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as 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.

This Office has, on numerous occasions, stated its approach toward construing the Freedom of Information Act, consistent with the foregoing expression of public policy by the Legislature:

> As with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to ascertain and give effect to the legislature's intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E. 2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E.2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Op. Atty. Gen., Op. No. 88-31, p.99 (April 11, 1988). To these basic tenets of construction, we would add here that the Freedom of Information Act, as with any statute, must be construed in common-sense fashion, consistent with its purpose. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). We would also note that those things which fall within the intention of the makers of a statute are as much within the statute as if they were within the letter, and words ought to be subservient to the intent and not the intent to the words. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Moreover, what is required to be done by law directly cannot be circumvented through indirect means. Cf. State ex rel. Edwards v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940). We must also keep steadfast in our minds that "the essential

purpose of the [Freedom of Information Act] is to protect the public from secret government activity." Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219 (1991).

With these principles as a foundation, we turn now to your specific question. Section 30-4-30 (a) mandates 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." The terms "public body" and "public record" are defined in Section 30-4-20 (a) and (c). There is no question that the records you have described are "public records" and that Coastal Carolina University is a "public body" pursuant to the FOIA.

The issue presented here is the effect of Section 30-4-40(a)(6) which provides in relevant part as follows:

> (a) The following matters are exempt from disclosure under the provisions of this chapter:
>
> ... (6) All compensation paid by public bodies except as follows:
>
> (A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;
>
> (B) For classified and unclassified employees including contractual instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;
>
> (C) For classified employees not subject to item (A) above who receive compensation of thirty

> thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;
>
> (D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars .... (emphasis added).

Subsection - (a)(6) speaks almost exclusively of "compensation" in defining the scope of this exemption. Except for one single reference to the words "salary schedule" contained in Section 30-4-40(a)(6)(C), the entire provision focuses upon the levels of "compensation" paid by public bodies which either must be disclosed or would be exempt from disclosure. Even subpart (C) makes reference to classified employees not subject to item (a) who receive "compensation of thirty thousand dollars or less annually". Thus, we must address the meaning of the term "compensation" as used in Section 30-4-40(a)(6) to determine the scope of its exemption.

The ordinary meaning of "compensation" as it is applied to public officers or employees is remuneration in whatever form it may be given. State v. Bland, 91 Kan. 160, 136 P. 947, 949 (1913). The term will be held to include not only a regular salary, but also costs and fees. Mullins v. Marion County, 72 S.C. 84, 86 (1904). While sometimes the word "compensation" is regarded as synonymous with "salary", Scruggie v. Scarborough, 162 S.C. 218, 160 S.E. 596 (1931), often, it is not, and usually includes not only salary, but fees, pay or other remuneration for official services. State ex rel. Emmons v. Farmer, 271 Mo. 306, 196 S.W. 1106 (1917). As the Court stated in St. Louis Fire Fighters Assn. Local No. 73 AFL-CIO v. City of St. Louis, 637 S.W.2d 128, 130 (Mo. App. 1982),

> "Compensation" is defined as the remuneration or wages given to an employee in salary, pay or emolument. The ordinary meaning of the term "compensation" as applied to officers is remuneration in whatever form it may be given, whether it be salaries, fees or both combined. It is broad enough to include other remuneration for official services such as mileage or

> traveling expenses and the repayment of amounts expended. The term is not necessarily synonymous with "salary." ... "Compensation" is the generic term and includes salary, fees, pay, remuneration for official services performed in whatever form or manner or at whatsoever periods the same may be paid. (emphasis added, citations omitted).

In a somewhat different context, we have similarly applied this meaning of the term "compensation" to a situation not unlike the one you have described. An opinion, dated October 30, 1981, addressed the meaning of "compensation" as applied to the retirement statutes. Regarding a question relating to additional remuneration, we concluded:

> ... overtime pay, shift differential pay and the pay of persons who teach summer school even though their contract is for less than a year are properly included within the meaning of the term "earnable compensation" or "compensation" as set forth in the retirement statutes.

See also, Op. Atty. Gen., July 14, 1982 (implying that additional payments from the State to a S. C. State professor during the summer months would be "compensation").

Moreover, where particular records relate to the manner in which public funds are spent, courts have determined in interpreting the FOIA, that this represents all the more reason for public disclosure. In Weston v. Carolina Research and Development Foundation, 303 S.C. 398, 404, 401 S.E.2d 161 (1991), for example, our Supreme Court stated that "... the only way that the public can determine with specificity how [public] ... funds were spent is through access to the records and affairs of the organization receiving and spending the funds." Further, the Court noted that the Freedom of Information Act "mandates that the public be provided with information regarding the expenditure of public funds." Similarly, in State ex rel. Stephan v. Harder, 230 Kan. 573, 641 P.2d 366, 376 (1982), the Supreme Court of Kansas concluded that

> ... the public's right to know how and for what purposes public funds are spent is a matter of legitimate public concern, far outweighing any personal privacy right of these providers to whom public funds are disbursed.

And only recently, this Office in the context of whether telephone records should be disclosed, stated that "[w]here an agency is public, and the public supports its use of a

telephone, it makes no sense that the public cannot see how and when that telephone is used." Op. Atty. Gen., No. 93-17, p.44, 46 (March 18, 1993).

Likewise, it would make no sense, for purposes of the Freedom of Information Act, not to include as "compensation" the supplemental remuneration received by a University or college employee from such employer. That interpretation would, as noted above, be inconsistent with the commonly understood meaning of "compensation". If a university employee is earning remuneration from the University, whether as part of his or her regular salary, teaching additional courses during the summer, or for whatever additional duties being performed for the University, such would, under any reasonable interpretation, be part of that employee's "compensation" from the University for purposes of the FOIA.

This construction would not only be in keeping with the spirit of the Act, but with the admonition from the courts that, where records show the manner of expenditure of public monies, there is virtually no legitimate reason why those expenditures should not be disclosed. In this instance, nondisclosure of a person's compensation because the actual salary is under $50,000 when, in reality, the employee's total compensation from the University exceeded such an amount, would actually mislead the public by giving the false impression that the public body was remunerating the individual in an amount considerably less than actually the case. Accordingly, it is our opinion that where the total compensation from the University is greater than $50,000, such should be disclosed pursuant to Section 30-4-40(a)(6)(A).[1]

We would add that even in those instances where the exemption contained in Section 30-4-40(a)(6) may be applicable, such exemption is not a mandatory requirement placed upon the public body and that body is free to disclose the records notwithstanding the exemption. As our Supreme Court recognized in Bellamy v. Brown,

> The FOIA creates an affirmative duty on the part of public bodies to disclose information. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exceptions from disclosure contained in Secs. 30-4-40 and -70 do not create a duty not to disclose.

[1]To those who would argue that this construction renders the amount of an individual's compensation variant from year to year, such is the case with anyone's compensation. An individual's return to the IRS often fluctuates depending upon his or her total earnings for that year. Common sense ought to prevail over technical niceties.

> These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act. We hold, therefore, that no special duty of confidentiality is established by the FOIA.

305 S.C. at _____. The conclusion in Bellamy was reaffirmed by the Court in S.C. Tax Commission v. Gaston, _____ S.C. _____, 447 S.E.2d 843 (1994).

Moreover, the courts have held that where records documenting public salaries are involved, disclosure thereof does not unreasonably invade personal privacy. See, Section 30-4-40(a)(2). As was stated in Penokie v. Mich. Technological University, 93 Mich. App. 650, 287 N.W.2d 304, 309 (1980),

> [t]he names and salaries of the employees of defendant university are not "intimate details" of a "highly personal" nature. Disclosure of this information would not thwart the apparent purpose of the exemption to protect against the highly offensive public scrutiny of totally private personal details. The precise manner of expenditure of public funds is simply not a private fact. The Court further noted that: [t]he minor invasion occasioned by disclosure of information which a university employee might hitherto have considered private is outweighed by the public's right to know precisely how its tax dollars are spent. Supra at 310.

Likewise, in State ex rel. Petty v. Wurst, 49 Ohio App. 3d 59, 550 N.E.2d 214 (1989), the Court held that disclosure of a county employee's name, classification, salary rate and gross salary was insufficient to rise to the level of an invasion of privacy. Observed the Court,

> [t]hus, any invasion of privacy would be slight and insufficient to outweigh the public's right to know.

550 N.E.2d at 216. See also, Society of Professional Journalists, Sigma Delta Chi v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984). Accordingly, based upon the foregoing authorities, even where the FOIA, pursuant to Section 30-4-40(a)(6) provides an exemption with respect to compensation of public employees, the public body may

disclose such information consistent with the "public's right to know precisely how its tax dollars are spent." Penokie v. Mich. Technological University, supra.

CONCLUSION

1. Where a public university or college employee earns remuneration from the university or college, whether as part of his or her regular salary, teaching additional courses during the summer, or for whatever additional duties are being performed for the university or college, such would, under any reasonable interpretation, be part of that employee's "compensation" from the university or college for purposes of the FOIA. In this instance, common sense must prevail over technical niceties. This construction is not only in keeping with the spirit of the FOIA, but also with the admonition from the courts that, where records show the manner of expenditure of public monies, there is virtually no legitimate reason why those expenditures should not be disclosed. While Section 30-4-40(a)(6)(C) does refer to the "salary schedule", it is generally understood that with most public employees, the "salary" is the exclusive means of "compensation", whereas with university faculty and employees, such is not necessarily the case. In this instance, nondisclosure of a person's compensation, because the actual salary is under $50,000 when, in reality, the employee's total compensation from the university or college exceeds that amount, would actually mislead the public by giving the false impression that the public body was remunerating the individual in an amount considerably less than is the case. Accordingly, it is our opinion that where the total compensation from the university or college is greater than $50,000, such must be disclosed.

2. Even where the FOIA exempts the compensation of a university or college employee, the public body is free pursuant to Bellamy v. Brown to disclose such information in keeping with "the public's right to know precisely how its tax dollars are spent."

Sincerely,

Charles Molony Condon
Attorney General

CMC/ph