

Reg. 5122



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 15, 1995

The Honorable Glenn F. McConnell
Senator, District No. 41
311 Gressette Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator McConnell:

You have asked the following question: if, as part of ongoing contractual negotiations between the Department of the Navy and the South Carolina Hunley Commission, the Navy releases the coordinates of the location of the sunken submarine, H. L. Hunley, only to the Hunley Commission, would such coordinates then become public information? It is my opinion that they would not.

A provision of the current Freedom of Information Act, S.C. Code Ann. Sec. 30-4-30(a) provides that "[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by Sec. 30-4-40 in accordance with reasonable rules concerning time and place of access."

A "public body" under the Act includes "... any state board, commission, agency and authority" Sec. 30-4-20(a). Subsection (c) of Section -20 defines a "public record" as including "... documentary materials regardless of physical form or characteristics ...". In a recent Informal Opinion, dated October 20, 1995, we recognized that the Hunley Commission was created by concurrent resolution in S.844 of 1995, with authority to

... make a study of the law regarding the rights to the Salvage of the "Hunley", a Confederate submarine, and any claim that a person or entity may assert with regard to ownership or control of the vessel. The committee is authorized to direct

The Honorable Glenn F. McConnell
Page 2
November 15, 1995

the Attorney General on behalf of South Carolina to take appropriate steps to protect and enforce the rights of the State of South Carolina to the salvage of the Hunley and to defend the State against claims regarding this vessel and to make recommendations regarding the appropriate method of preservation of this historic vessel.

Clearly, under any reasonable view, the Commission would be subject to the FOIA.

The issue, however, is the applicability of the Act's exceptions to the type of records you describe, the coordinates of a shipwreck. Reference is made to Section 30-4-40(5) which exempts:

- (5) [d]ocuments of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property.

In the October 20 Informal Opinion, referenced above, we concluded that, based upon the directions from the General Assembly set forth in S.844 of 1995, the Hunley Commission "would be the primary signatory to any agreement ..." with the Navy. It was stated in that Informal Opinion that

[t]he General Assembly clearly intended for the Commission to "take appropriate steps" regarding the rights of the State and to "make recommendations" regarding preservation. Thus, based upon the General Assembly's intent, the Hunley Commission would take the lead and be the primary party in the negotiation of any agreement [with the Navy]. In my judgment, therefore, the Hunley Commission would be an essential party to any agreement.

Id. at 2.

It is my understanding that negotiations between the Navy and the State (through the Hunley Commission) are presently ongoing. It is also my understanding that the site coordinates of the vessel would be part of such negotiations. Thus, the coordinates to the site of H. L. Hunley would be exempt pursuant to Section 30-4-40(5).

The Honorable Glenn F. McConnell
Page 3
November 15, 1995

Moreover, the General Assembly has also recognized the importance of maintaining the confidentiality of site coordinates of historic shipwrecks. In the Underwater Antiquities Act, S.C. Code Ann. Sec. 54-7-820(A) makes confidential archaeological and paleontological records of the South Carolina Institute of Archaeology and Anthropology pertaining to submerged archaeological historic properties including the "actual location of the properties" Such records "may only be opened when the State Archaeologist considers that it is in the best interest of the State to allow access to the records upon good cause shown by the persons petitioning to open the records."

Section 30-4-40(4) exempts "[m]atters specifically exempted from disclosure by statute or law." While the information you describe would technically not constitute records of the Institute, nevertheless, the General Assembly has recognized the important policy considerations regarding non-disclosure of such information. Release of site location data could lead to potential looting of a historic site. It would circumvent the Legislature's purpose to conclude that the site location information is confidential when in the hands of the Institute, but not so in the custody of another agency. We have previously concluded that, where confidentiality appears consistent with the intended purpose of a statute, records "retain their confidentiality regardless of who maintains the records." Op. No. 84-22 (February 22, 1984).

Thus, it would appear that, based upon Sections 30-4-40(4) and (5), the location of site coordinates of the H. L. Hunley would be exempt from disclosure as public information.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions 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 am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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