



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 24, 1996

R. Allen Young, Esquire
Mount Pleasant Town Attorney
Post Office Box 745
Mount Pleasant, South Carolina 29465

Re: Informal Opinion

Dear Mr. Young:

You have asked the following questions regarding the Freedom of Information Act:

1. How soon does the law require a matter to be released to the public? Section 30-4-30(c) of the Code of Laws of South Carolina states that "each public body, upon written request for records made under this chapter, shall within fifteen (15) days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore."
2. How much of an incident report has to be released? Can any matter in an incident report be withheld? If so, what specifically? Section 30-4-40(a) addresses specific matters which are exempt. Are "all" lab results [DUI] and statements of witnesses and a defendant contained in an incident report releasable or is there a reasonable basis upon which such things may not be released?

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Law / Analysis

South Carolina's Freedom of Information Act, codified at S.C. Code Ann. Section 30-4-10 et seq. has as its purpose the following statement:

... it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials 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 person seeking access to public documents or meetings.

Because of this clear legislative intent, we have often noted that the FOIA "is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly." Ops. Atty. Gen. dated March 27, 1984; February 22, 1984; August 8, 1983; November 14, 1989.

Likewise, our Supreme Court, in Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991) has characterized the purpose of FOIA thusly:

[w]e find the essential purpose of the [Act] is to protect the public from secret government activity. Sections 30-4-40(a) (2) and 30-4-70(a)(1) provide general exceptions to disclosure by exempting certain matters from disclosure. Bellamy, however, urges protection of her rights as an individual while the [FOIA] protects a clearly identifiable class, the class protected is the public. No where do Secs. 30-4-40 and -70 purport to protect individual rights

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 exemptions from disclosure contained in Secs. 30-4-40 and -70 do not create a duty not to disclose. The 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

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confidentiality can be found in the language of the Act. ...
(emphasis added).

305 S.C. at 295, 408 S.E.2d at 221.

Section 30-4-30(a) states 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." Section 30-4-40 enumerates several exemptions. Section 30-4-30(c) provides in pertinent part:

[e]ach public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request of its notify the person making such request of its determination and the reasons therefor. ... If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

I know of nothing in the FOIA or any case law interpreting the Act that absolutely requires a public body to release records prior to expiration of the 15-day period contained in the Act. However, the 15-day period would be like an exemption contained in Section 30-4-40. While the Act does not mandate disclosure, neither does it mandate non-disclosure prior to the expiration of 15 working days, either. A public agency is not duty bound to hold records until the 15-day period expires, any more than it is required to withhold records merely because an exemption under the FOIA exists.

As the Court held in Bellamy, there is no duty under the Act "not to disclose." When read together with the Act's purpose -- to provide "a minimum ... delay to the person seeking access to public documents ..." --, it is my opinion that, while Section 30-4-30(a) does not absolutely require disclosure prior to the expiration of the 15 day period, the public body is certainly free to provide the information requested at any time before the end of such period if it so desires. Certainly, earlier disclosure is consistent with the "spirit" of the Act and the intent of the General Assembly in enacting the Freedom of Information Act.

You have also asked about the disclosability of incident reports. Section 30-4-50(A)(8) of the FOIA provides that

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(A) [w]ithout 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 Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

... (8) incident reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where an incident report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the incident report.

Pursuant to this statute, we have repeatedly concluded that police incident reports constitute public information.

When examining an incident report or any part thereof for purposes of a request for disclosure, I think the presumption is that it is disclosable. Certainly, only one of the specific exemptions contained in Section 30-4-40 could be relied upon for not disclosing any part of an incident report. See, City of Cola. v. Am. Civ. Lib. Union, Op. No 24475 (Aug. 12, 1996) [exemptions with respect to public records "must be resolved by reference to § 30-4-40]. Moreover, it is our consistent advice when dealing with an FOI request, that

[e]xemptions from or exceptions to the Act's applicability are to be narrowly construed. News and Observer Pub. Co. v. Interim Bd. of Ed. for Wake Co., 29 N.C. App. 37, 223 S.E.2d 580 (1976). This Office has strongly favored a policy of disclosure should any doubt exist in that regard.

Moreover, as stated, even if a specific exception exists with respect to a portion of an incident report, the FOIA does not mandate non-disclosure thereof. As the Court stated in Bellamy, "[t]he exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure." The FOIA, therefore, does not preclude the agency from disclosing even an exempted portion of an incident report if it so chooses.

With respect to lab reports regarding tests for DUI, we have previously concluded "the results of blood alcohol tests are public information and thus may be disclosed." Op. Atty. Gen., Op. No. 88-43 (May 26, 1988).

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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

RDC/an