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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 1, 1997

Harold D. Sims, Chief of Police
Blackville Police Department
213 N. Lartigue Street
Blackville, South Carolina 29817

Re: Informal Opinion

Dear Chief Sims:

You advise that on November 5, 1997, the Town of Blackville received a request from a Barnwell newspaper requesting a copy of all telephone bills including cellular telephone bills from all Blackville Town Departments. You state that "[t]he police departments only has (2) two cellular telephones and use them to conduct many phases of investigations with informants and receive numerous calls from informants." You are of the view "that the release of this information to anyone could endanger someone's life or compromise present and future investigations by this department should the number listed on the phone bills be made public."

LAW / ANALYSIS

Of course, this Office is unable to issue an opinion on a pending Freedom of Information Act request. Each document must be examined individually to determine whether the Act requires disclosure in a given situation. As to your response to this specific request, I would advise that you consult closely with the Town's Attorney in formulating a response.

However, I can advise you generally concerning this Office's approach to and general counsel with respect to Freedom of Information Act matters. I am enclosing a copy of Op. Atty. Gen., Op. No. 93-17 (March 18, 1993) in this regard. There, this Office addressed in considerable detail whether a public agency was required to release its telephone records upon request pursuant to the Freedom of Information Act. In that

Request Letter

Opinion, we quoted the Supreme Court's language in Bellamy v. Brown, 305 S.C. 291, 408 S.E.2d 219 (1991) where the Court found that

... the essential purpose of the FOIA 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. Nowhere do §§ 30-4-40 and -70 purport to protect individual rights. ...

Based upon the Court's reasoning in Bellamy, that the FOIA creates no special duty of confidentiality," we thus found that "the Freedom of Information Act does not create a promise of confidentiality with respect to individuals whose telephone numbers might be listed on the telephone bills in question."

Moreover, in the 1993 Opinion, we noted that "[i]t is unquestioned that public funds are used to pay the telephone bills, in the absence of an individual reimbursing the relevant public body ... for personal telephone calls." We stated that "where the expenditure of public funds is involved, the courts have balanced the competing interests of the public's right to be apprised of how public funds are spent against possible personal privacy interests, the balance being tilted in favor of disclosure." We also referenced a decision of the Supreme Court of Georgia in Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991), which held that disclosure of cellular telephone bills paid by the City of Atlanta would be required notwithstanding that unlisted telephone numbers might be revealed. There, the City argued that deletion from records of telephone numbers called from city cellular telephones would be necessary to protect the privacy interests of individuals who might have unlisted telephone numbers. The Court stated that Georgia's exemption for invasion of personal privacy, similar to our § 30-4-40 (a)(2), is to be determined by the standards applicable to the tort of invasion of privacy. The Court stated, however, that "the exemption is not meant to exclude 'legitimate inquiry into the operation of a government institution and those employed by it.'" 405 S.E.2d at 45. After reviewing the elements necessary to recover for invasion of privacy in tort the Court concluded that

[e]ven if we were to hold that publication of unlisted telephone numbers involved disclosure of secret or private facts, we cannot say, in the circumstances presented here, that such

disclosure would be so offensive or objectionable to a reasonable man as to constitute the tort of invasion of privacy.

Id. Thus, as we noted in the earlier opinion, the Supreme Court of Georgia affirmed the trial court's holding that the cellular telephone bills, complete with telephone numbers called from such telephones, would not be exempt from disclosure under Georgia's FOIA. Thus, we advised that "[w]e are of the opinion that § 30-4-40 (a)(2) would not present a valid reason, absent some specific showing to the contrary, to withhold the telephone billing records"

Our 1993 Opinion did recognize that these were circumstances which might warrant the deletion or redaction of some telephone numbers. In that regard, we stated:

[o]f course, the provisions of § 30-4-40 are still applicable if it might be shown that a disclosure of a specific telephone number would unreasonably invade a particular person's privacy or compromise an on-going law enforcement investigation, as examples. We are not saying that the exemptions contained in § 30-4-40 may not be applicable in a given case, but that § 30-4-40 could not be used to prevent the disclosure of all telephone records, particularly since § 30-4-40 (b) requires that exempt records be separated from non-exempt records and the latter disclosed. We believe that good faith effort should be made to disclose all records that are not exempt, keeping in mind that disclosure is the rule and exemptions are to be construed narrowly.

This Opinion should thus serve to assist you in properly responding to this and future FOIA requests. Your agency thus must examine the records individually, separating any exempt material (such as calls to informants) from non-exempt matters (i.e. calls to the mayor or other such calls which are not protected under § 30-4-40). However, as we cautioned in the 1993 Opinion a "good faith effort should be made to disclose all records that are not exempt, keeping in mind that disclosure is the rule and exemptions are to be construed narrowly."

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.

Chief Sims
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With kind regards, I am

Very truly yours,

A handwritten signature in dark ink, appearing to be 'RDC', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph

Enclosure