

OS-6276  
Library



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 12, 1997

The Honorable Herbert Kirsh  
Member, House of Representatives  
Box 31  
Clover, South Carolina 29710

Re: Informal Opinion

Dear Representative Kirsh:

You have asked several questions regarding the Freedom of Information Act. Specifically, you inquire as to the following:

- (1) Does S.C. Code § 30-4-30(c) require that the [FOIA] request be in writing?
- (2) Must the request contain a statement of or in some other way mention specifically the Freedom of Information Act, the Code citation of the Act, or any express statement acknowledging that the request is specifically made pursuant to the Act?
- (3) Does the law require that any particular form be used by a person making a request for records made public under the Freedom of Information Act?

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:

*Request Shotts.*

... 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 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.

(emphasis added). 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 the FOIA thusly:

we find that 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. Nowhere 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.

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

Section 30-4-30(a) of the FOIA 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." Subsection (c) provides in pertinent part as follows:

Representative Kirsh

Page 3

June 12, 1997

[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 notify the person making such request of its determination and the reasons therefor. (emphasis added).

With the foregoing in mind, we turn now to your specific questions. Clearly, by its express terms, the statute requires that a request for records made pursuant to the Freedom of Information Act must be a "written request." Thus, the answer to your first question is yes.

You also ask whether such written request must "contain a statement or in some other way mention specifically the Freedom of Information Act, the Code citation of the Act, or any express statement acknowledging that the request is specifically made pursuant to the Act," or whether the FOIA requires "that any particular form be used by a person making a request for records made public under the Freedom of Information Act?" The answer to both these questions is no.

In view of the requirement that the FOIA must be liberally construed to effectuate its purpose as well as the intent of the General Assembly that records must be provided at a "minimum cost or delay", I do not read the Act as in any way mandating that a requestor must recite the statute or refer to it in his request letter.

The purpose of the FOIA is to provide non-exempted records upon request. The request must be a "written request" it is true, but no particular form for the writing is mandated by the General Assembly. It would completely run contrary to the spirit of the Act to require the citizen to recite the FOIA Code provision or make reference to the "Freedom of Information Act" in order to make the request valid under the FOIA.

It is true that the statute refers to a "written request for records made under this chapter ... ." However, the statute's referenced language serves merely to make it clear that the requestor is seeking records pursuant to the FOIA -- which gives him a right and remedy to such records -- not that the requestor must specifically mention the FOIA in his request letter. The Freedom of Information Act provides the citizen with a remedy for access to records, but it does not then impose a hypertechnical formula upon him in order to employ that remedy. The custodian cannot engage in a game of "gotcha" merely because the citizen does not recite certain magic words. To impose such a burden is akin to the old system of Code Pleading where a court was required to throw out a case if the plaintiff's complaint did not recite a cause of action in the proper form.

Representative Kirsh  
Page 4  
June 12, 1997

It is well recognized that a custodian of records "must employ those means which are least intrusive to the right of access. The custodian must lend all possible reasonable cooperation to make the inspection convenient to persons entitled thereto." 76 C.J.S., Records § 95. Moreover, it has also been stated that

[a] request that a state governor lift a "gag order" regarding certain information was construed as a request for information under the State's Right to Know Law, on the basis that a request to remove a barrier to the providing of information is equivalent to a request that the information be made available and where the letter asked that executive officials provide the requestor with the information previously requested.

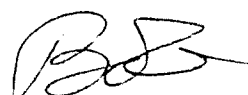
37A Am.Jur.2d, Freedom of Information Acts, § 421.

Finally, in Op.Atty.Gen., Op.No. 81-64 (July 7, 1981), this Office stated that "[t]he request need only be in writing to render the statute operational. No particular form for the request is required or necessary." That statement makes good common sense, avoids a hypertechnical reading of the statute and is in accord with the spirit of the Freedom of Information Act. Therefore, the above quoted language contained in Op.No. 81-64 is reiterated and reaffirmed here today. A custodian should simply treat the written request as one made pursuant to the Freedom of Information Act, regardless of whether the Act is cited, referenced, quoted, or mentioned in the request letter. The request for records itself should be sufficient, irrespective of the form of the request letter.

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/ph