



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

October 7, 1998

The Honorable Ronald P. Townsend  
Chairman, Anderson County Legislative Delegation  
Post Office Box 8002  
Anderson, South Carolina 29622

RE: Informal Opinion

Dear Representative Townsend:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that the Anderson County Legislative Delegation recently received a telephone call with a request for copies of all documents relating to, created by, or otherwise concerning the delegation and its members. You state that you anticipate a written request on this matter in the future. You have reviewed the Freedom of Information Act (hereinafter the "FOIA") and believe that while materials regarding official delegation business are subject to disclosure, documents of individual legislative members are exempt from disclosure. You have asked whether this is a correct interpretation of the FOIA.

At the outset, it is noted that in Section 30-4-15 of the South Carolina Code of Laws, the General Assembly has made the following findings with respect to freedom of information:

The General Assembly finds that 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

*Request Letter*

fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

In view of the expressed legislative purpose, this Office has 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 November 14, 1989 and March 27, 1984.

Section 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 § 30-4-40 ..." The term "public record" is defined in Section 30-4-20(c) to include:

all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in possession of, or retained by a public body. ...<sup>1</sup>

This Office has previously concluded that Legislative Delegations are "public bodies" for purposes of the FOIA and, thus, the provisions of the Act apply to such entities. Op. Atty. Gen. dated September 6, 1984. We have also concluded that the possession of public records by a Legislative Delegation triggers the applicability of the FOIA and causes the various statutes and guidelines to come into play and records to be disclosed insofar as is possible. Op. Atty. Gen. dated October 6, 1993.

Therefore, in regards to the disclosure of documents in possession of the Legislative Delegation, it must first be determined whether such documents meet the definition of "public record." If these documents are "public records" and not otherwise exempt from disclosure, then these documents would have to be disclosed upon proper request. Finally, if a public record in possession of the Legislative Delegation contains both exempt and nonexempt information, the Legislative Delegation must separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of the FOIA. S.C. Code Ann. § 30-4-40(b).

Turning now to your question regarding the disclosure of documents of individual legislators, this subject is specifically addressed in the FOIA. Section 30-4-40(a)(8) provides that a public body may but is not required to exempt from disclosure the following information:

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<sup>1</sup> This section also excludes certain other records from the definition of "public record."

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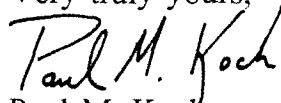
(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

As you can see, if the documents in question are memoranda, correspondence, or working papers in the possession of individual members of the General Assembly or their immediate staff, these documents need not be disclosed under the FOIA. I note that this particular statute is permissive rather than mandatory in that the records may be withheld from disclosure, but are not required to be.

This letter is an informal opinion only. It has been written by a designated assistant 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 kindest regards, I remain

Very truly yours,

A handwritten signature in black ink that reads "Paul M. Koch". The signature is written in a cursive style with a large, stylized "P" and "K".

Paul M. Koch

Assistant Attorney General