ALAN WILSON
ATTORNEY GENERAL

December 30, 2013

Paige E. Tiffany, Esquire
City of Aiken Solicitor
P.O. Box 1177
Aiken, S.C. 29802

Dear Ms. Tiffany,

You seek an opinion of this Office concerning a request under the Freedom of Information Act (FOIA) for an incident report concerning an alleged sexual assault committed by one minor child against another that took place at a local middle school. By way of background, you state:

> On November 20, 2013, ... [the] Aiken Department of Public Safety received a [FOIA] request from The Jail Report[1] for an alleged sexual assault that took place between two juveniles at a local middle school.
>
> I responded to the request on December 10, 2013, stating that South Carolina Code § 63-19-2030 specifies that law enforcement records involving juveniles are confidential and therefore not subject to public inspection even under [FOIA]. The publisher then requested mere confirmation that such a report was made and if it resulted in an arrest.

With this information in mind, you ask "whether an incident report involving a juvenile subject can be released if the identifying information is redacted or whether the incident report must be maintained confidentially in its entirety?" In addition, you ask "may the Aiken Department of Public Safety even confirm or deny such a report has been made and, if so, if it resulted in an arrest?" After further discussion, you indicate that if the incident report should be released you also wish to know whether the minor victim's identifying information should be redacted.

Law/Analysis

The FOIA generally provides any person with the right to inspect "any public record of a public body" unless the record or any information contained therein is otherwise exempt from disclosure. S.C. Code § 30-4-30(A). Subject to specified exceptions and limitations, certain categories of information are specifically made public, including:

[1] According to its website, "The Jail Report is a crime-fighting publication established in June 2009 in the Augusta-Aiken area. The weekly newspaper includes mugshots and arrest information, wanted people, crime news, dumb crook stories and opinion columns." See thejailreport.com/about/.

> [R]eports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

§ 30-4-50(A)(8); see also § 30-4-30(d)(2) (providing certain records must be made available for public inspection during hours of operation including "all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day").

Matter expressly exempt from mandatory disclosure under FOIA include, *inter alia*:

> (2) Information of a personal nature where the public disclosure thereof would constitute an unreasonable invasion of privacy....
>
> (3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:
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> ....
>
> (D) by endangering the life, health, or property of any person; ....
>
> (4) Matters specifically exempted from disclosure by statute or law.

§ 30-4-40(a)(3), (4). Information in a public record which is otherwise exempt from disclosure may be redacted. See § 30-4-40(b) ("If any public record contains material which is not exempt ... the public body shall separate the exempt and nonexempt material and make the nonexempt material available"); see also Newberry Pub. Co., Inc. v. Newberry County Comm'n on Alcohol and Drug Abuse, 308 S.C. 352, 356, 417 S.E.2d 870, 873 (1992) (recognizing that information exempt under FOIA may be redacted from public records made available).

As we stated in a recent opinion concerning incident reports under FOIA:

> [W]e have repeatedly advised that "incident reports and arrest warrants generally are disclosable unless such reports contain information otherwise exempt from disclosure by law." Op. S.C. Att'y Gen.. 1989 WL 406106 (Feb. 23, 1989) (citing Op. S.C. Att'y Gen., 1983 WL 181828 (April 4, 1983) ("the presumption of disclosure follows the information [transferred from an incident report to an arrest warrant] unless that information is subject to deletion from the incident report as otherwise provided by law")). The 1983 opinion went on to state:
>
> > All information in an incident report is public information unless it may be deleted ... as constituting an unreasonable invasion of personal privacy under [§ 30-4-40(a)(2)], or as being otherwise exempted from disclosure by statute or law under [§ 30-4-40(a)(4)], [or] as being harmful to the agency in question [under § 30-4-40(a)(3)]....

Op. S.C. Att'y Gen.. 1983 WL 181828 (April 4, 1983).

Op. S.C. Att'y Gen., 2013 WL 5955672 (Oct. 24, 2013).

With the above in mind, the Legislature has expressly addressed the public dissemination of law enforcement records concerning children in § 63-19-2030 of the Juvenile Justice Code:[2]

> (A) Except as provided herein, **law enforcement records and information identifying children[3] pursuant to this chapter are confidential and may not be disclosed directly or indirectly to anyone**, other than those entitled under this chapter to receive the information.
>
> (B) Law enforcement records of children must be kept separate from records of adults. **Information identifying a child must not be open to public inspection, but the remainder of these records are public records**.
>
> ....

§ 63-19-2030(A), (B) (emphasis added).[4]

We are not aware of any court decision or prior opinion of this Office specifically addressing whether § 63-19-2030 renders confidential any law enforcement record concerning an offense allegedly committed by child in its entirety or only the information contained therein which identifies the child. Looking to the relevant rules of statutory interpretation, "[t]he cardinal rule ... is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000). "[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." Harris v. Anderson County

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[2] Chapter 19 of Title 63 is known as the Juvenile Justice Code. See § 63-19-10 ("This chapter may be cited as the 'Juvenile Justice Code'").

[3] See § 63-19-20(1):

> (1) "Child" or "juvenile" means a person less than seventeen years of age. "Child" or "juvenile" does not mean a person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item.

[4] § 63-19-2040(A) also broadly prohibits the release of "[t]he name, identity, or picture of a child under the jurisdiction of the [family] court" to the press. The family court's jurisdiction over a child charged with a crime attaches when the child is taken into custody. § 63-19-810(A).

Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007).

If the language of subsection (A) of § 63-19-2030 stating "law enforcement records and information identifying children pursuant to this chapter are confidential" is viewed in isolation, it is unclear whether the Legislature sought to prohibit the public dissemination of any law enforcement record as a whole which identifies an alleged child offender or the identifying information of the child only. However, the language of subsection (B) provides that although "[i]nformation identifying a child must not be open to public inspection, *the remainder of these records are public records*." § 63-19-2030(B) (emphasis added). Thus, through § 63-19-2030(B) we believe the Legislature has expressly declared law enforcement records concerning children to be public records with the exception of the child's identifying information. Furthermore, various other provisions in § 63-19-2030 evince a legislative intent to protect only the identifying information of a child from public dissemination or inspection. See § 63-19-2030(E) (providing that "[i]ncident reports, *including information identifying a child*, must be provided by law enforcement to the principal of the school in which the child is enrolled" when the child is charged with certain offenses) (emphasis added); § 63-19-2030(F) (photographs taken by law enforcement or detention center of child charged with any offense "may only be disseminated for criminal justice purposes or to assist Missing Persons Information Center"); § 63-19-2030(G)-(K) (generally providing that fingerprint records of child taken into custody must be kept separate from those of adults and may not be disclosed unless specifically authorized by law or court order).

Accordingly, when the various provisions of § 63-19-2030 are read as a whole and construed in conjunction with each other, it is clear to us the Legislature intended to prohibit only the public dissemination of the identifying information of a child contained within law enforcement records. As stated in § 63-19-2030(B), the remainder of such law enforcement records are public records. Consistent with the relevant provisions of FOIA and prior opinions of this Office previously mentioned, we continue to advise that incident reports are generally public records subject to disclosure. All information in any such report is public information with the exception of any specific information therein which is otherwise exempt from disclosure by law and thus may be deleted or redacted. Therefore, it is our opinion an incident report concerning an offense allegedly committed by child is generally subject to disclosure under FOIA with the exception of the child's identifying information which should be redacted from the report made available to the public.

To the extent you ask whether the Aiken Department of Public Safety can confirm or deny whether the incident resulted in an arrest, we are aware of no law rendering such information confidential. Thus, a law enforcement agency may confirm or deny whether an arrest has been made as a result of an incident involving a child. Pursuant to § 63-19-2030, however, the child's identifying information should be omitted from any statement or records released to the public.

With regards to your question concerning the release of the identifying information of the alleged child sexual assault victim, Article I, § 24 of the S.C. Constitution provides a Victims' Bill of Rights and states, in relevant part:

> (A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, **victims of crime have the right to**:
>
> > (1) be treated with fairness, respect, and dignity, and to **be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process**, and informed of the victim's constitutional rights, provided by statute;
> >
> > ....

S.C. Const. art. I, § 24(A)(1) (emphasis added). In a 2006 opinion, we advised that consistent with the above provision, "the disclosure of a juvenile victim's identity could conflict with that victim's right to be free from intimidation, harassment or abuse ...." Op. S.C. Att'y Gen., 2006 WL 1376904 (May 5, 2006).

Various statutory provisions also provide for the confidentiality of a victim's identity. Several such provisions are found in Article 15, Chapter 3 of Title 16 concerning victim services. The legislative intent of this article's provisions is, in part, "to ensure that all victims ... to a crime are treated with dignity, respect, courtesy, and sensitivity; [and] that the rights and services extended in this article to victims of ... a crime are honored and protected by law enforcement agencies, prosecutors, and judges *in a manner no less vigorous than the protections afforded criminal defendants* ...." § 16-3-1505 (emphasis added). Subsection (C) of § 16-3-1525 states:

> (C) A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must provide to the jail, prison, or detention or holding facility, including a mental health facility, having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. **The names, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility, including a mental health facility, are confidential and must not be disclosed directly or indirectly, except as necessary to provide notification.**

§ 16-3-1525(C) (emphasis added).

In addition, subsection (G) of § 16-3-1535 provides:

> (G) In cases in which the sentence is more than ninety days, the summary court judge must forward, as appropriate and within fifteen days, a copy of each victim's impact statement or the name, mailing address, and telephone number of each victim, or both, to the Department of Corrections, the Department of Probation, Parole and Pardon Services, or the Board of Juvenile Parole, the Department of Juvenile Justice, and a diversion program. **The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the**

> **Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly**, except by order of a court of competent jurisdiction or as necessary to provide notifications, or services, or both, between these agencies, these agencies and the prosecuting agency, or these agencies and the Attorney General.

§ 16-3-1535(G) (emphasis added).

In consideration of the above provisions, we stated in the 2006 opinion previously mentioned as follows:

> [T]here is a basis to support the conclusion that the names of juvenile victims should not be casually released to the public. While the provisions of Title 16 dealing with victims generally do not specifically state that all law enforcement agencies should not release the names of victims including juveniles to the public, as referenced, certain agencies and departments, such as jails or other detention facilities, are specifically prohibited from releasing the names of victims except by court order or to provide required notifications.

Op. S.C. Att'y Gen., 2006 WL 1376904 (May 5, 2006). We believe the language of § 16-3-1505 stating the rights and services extended to victims "are honored and protected ... in a manner no less vigorous than the protections afforded criminal defendants" provides even further support for withholding the identity of a child victim from the public where, as here, the name of the child charged with the crime is withheld.

Furthermore, as previously mentioned, FOIA permits a public body to exempt from disclosure, *inter alia*, personal information which, if disclosed, would constitute an unreasonable invasion of privacy, and records of law enforcement agencies "compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by ... endangering the life, health, or property of any person ...." § 30-4-40(a)(2), (3). Consistent with these provisions, we advised in a 1980 opinion that a law enforcement agency could withhold information concerning the identity of a sexual assault victim if the public disclosure of such information would constitute an unreasonable invasion of personal privacy under § 30-4-40(a)(2). Op. S.C. Att'y Gen., 1980 WL 121015 (Dec. 31, 1980). In the 2006 opinion previously mentioned, we also advised that the exemption found in § 30-4-40(a)(3)(D) "would support not releasing the names of a juvenile victim if it was determined that the release of such information would endanger the life, health, or property of the juvenile." Op. S.C. Att'y Gen., 2006 WL 1376904 (May 5, 2006). Thus, while we are unaware of any statutory provision which expressly prohibits a law enforcement agency from disclosing the identity of a child sexual assault victim to the public, a law enforcement agency may be justified in redacting such identifying information from an incident report for any of the reasons stated above.

Conclusion

Consistent with numerous prior opinions of this Office, we continue to maintain that incident reports are generally subject to mandatory disclosure under FOIA with the exception of any specific information therein otherwise exempt from disclosure by law. Here, a specific exemption is created by § 63-19-2030 which expressly prohibits the public dissemination or inspection of information in incident

reports and other law enforcement records identifying a crime allegedly committed by a child. Accordingly, it is our opinion such an incident report or other law enforcement record concerning a child must generally be released to the public or made available for public inspection with the child's identifying information redacted from the report. Furthermore, we are unaware of any law rendering confidential information or records in a law enforcement agency's possession indicating whether an arrest resulted from an incident simply because it involves a child. Thus, we believe a law enforcement agency may confirm or deny whether an arrest was made as long as the child's identifying information is omitted from any statement or information released to the public.

While we are unaware of any similar statutory provision which expressly prohibits a law enforcement agency from releasing the identifying information of a child victim, the redaction of such information from an incident report may be justified for several reasons. We have previously advised that the Victims' Bill of Rights found in Article I, § 24 of the S.C. Constitution and several provisions in Article 15, Chapter 3 of Title 16 of the S.C. Code provide "a basis to support the conclusion that the names of juvenile victims should not be casually released to the public." Where, as here, the identifying information of the child charged with the crime is required by law to be withheld from law enforcement records released to the public, further support for also withholding the identifying information of the victim is found in § 16-3-1505 providing that protections afforded victims are to be honored and protected "in a manner no less vigorous than the protections afforded criminal defendants." Furthermore, consistent with prior opinions of this Office, a law enforcement agency may withhold the identifying information of a child victim, particularly one who is the victim of sexual assault, under § 30-4-40(a) of FOIA if the agency determines that the release of such information would constitute an unreasonable invasion of personal privacy or would endanger the life, health, or property of the child.

Sincerely,

Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General