

The State of South Carolina



Office of the Attorney General

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July 10, 1991

The Honorable James L. Solomon, Jr.
Commissioner, South Carolina Department
of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

By your letter of April 4, 1991, you have advised that the South Carolina Department of Social Services is considering the publication of a Ten Most Wanted Non-supporting Parents poster. You have asked whether publication of the information contained therein (obtained from records of the Clerk of Court and motor vehicle records, in large part) would violate the provisions of S.C. Code Ann. §§ 43-5-590 and/or 43-5-610 concerning confidentiality of certain records maintained by the Department of Social Services. 1/

Proposed Poster

The proposed poster would state that South Carolina's ten most wanted non-supporting absent parents were "wanted" by DSS and/or law enforcement authorities due to the amount of past due child support they owe. Persons with information about the subjects on the poster would be directed to call a toll-free telephone number. Each subject would be identified by name, photograph, age, height, weight, number of children and their ages, occupation, amount of child support ordered to be paid, how many payments have been missed, amount of past due support which has accrued as of a certain date, parent's last known whereabouts, when last payment was made, and perhaps other information (outstanding bench warrants, for example).

To be eligible for inclusion on the poster, an absent parent must be under an order to pay child support. The case must have an outstanding arrearage of \$5,000.00 or more, verified by records of

1/ This opinion is limited to consideration of applicability of §§ 43-5-590 and 43-5-610 and does not examine other possible problems such as libel.

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the Clerk of Court as of a certain date, and there must be an outstanding, valid, active warrant for the persons's arrest. The arrearage must be at least three months old. The case must be enforceable by contempt. The custodial parent must provide written authorization to have her case included in the project. There are other requirements to be met, as well, as to type of case to be included in the project, documentation of records, case review, and so forth.

Clearly, most if not all of the information to be publicized would be contained in the files of the Office of Child Support Enforcement of DSS. The information would also be available from the files in the offices of the clerks of court, as in domestic relations files, child support enforcement records, judgment rolls perhaps, and similar records. The photographs on the poster would come primarily from the driver's license files of the South Carolina Department of Highways and Public Transportation.

Statutes

Two statutes relative to child support are of concern with respect to this project. One is § 43-5-590, which sets forth the powers and duties of DSS relative to its child support enforcement duties. In subsection (d), DSS is directed to establish a separate unit within the agency to develop and implement a child support enforcement plan which will conform to federal law. Pursuant to § 43-5-590(d), DSS may request, of an employer, information on a child support obligor such as name, address, and social security number. That Code section then provides: "The department, upon receipt of this information, may make it available only to the appropriate officials or agencies of this or any other state operating a program pursuant to Title IV-D of the federal Social Security Act."

Then, by § 43-5-610, DSS is directed to maintain a central registry of records "with respect to any parent who has deserted or abandoned any child receiving Aid to Families with Dependent Children." The records would show: full name (and any alias) of such parent; date and place of birth; physical description; social security number; occupation; any special skills; military status; Veterans' Administration or military service serial number; last known address; driver's license number; and possibly other information. Subsection (c) then provides:

Any records established pursuant to the provisions of this section are available only to public welfare offices, county attorneys, solicitors, probation departments, central registries in other states, and courts having jurisdiction in support or abandonment proceedings or actions and only for the purposes for which the records have been established.

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It is noted that the central registry of records thereby established relates to AFDC cases; the cases under consideration for the poster project must be active but not necessarily AFDC cases.

Other Considerations

We have not identified a statute within Title 20, relative to domestic relations, or Title 43, relative to child support, which would automatically make the family court or clerk of court records relative to a given child support case confidential, though a specific record may be sealed at the discretion of the court and thus would not be public.

Information obtained from the Office of Court Administration as to confidentiality in the family court does not seem to automatically preclude the public nature of much of the records in child support cases. In the manual for clerks of court, in § 5.8.1, there are two recognized levels of confidentiality: sealed records and confidential records. Sealed records would include: abortions for minors, terminations of parental rights, and adoptions; access to these records would require a court order. Confidential records include those related to juvenile delinquency and abuse and neglect; access to these categories is restricted to those persons who have a legitimate interest in the proceeding. Domestic relations, divorce, separate maintenance, or child support enforcement actions do not seem to be encompassed in these categories.

If the child support enforcement is being handled through the Uniform Reciprocal Enforcement of Support Act (URESA), § 20-7-1010 would require that a verified petition be filed, containing information such as the name of the obligor, address and circumstances of the obligor, persons for whom support is sought, and "all other pertinent information" which undoubtedly will vary from case to case. The obligee may include in or attach to the petition information to help locate or identify the obligor, such as a photograph, description of distinguishing marks, other names or aliases which the obligor might use, name of employer, or Social Security number. Thus, it may well be that a URESA file established in the clerk of court's office may, as a matter of public record, contain most, if not all, of the information which might appear on the Ten Most Wanted poster, for an example.

As a practical matter, and to avoid violating §§ 43-4-590 and 43-5-610, we suggest that matters which should appear on the Ten Most Wanted poster be supported from documents available by public record to avoid even a suggestion that the confidentiality apparently required by these statutes has been breached. It would appear that these statutes do make the DSS files confidential except as to disclosures authorized within the statutes, but matters of public record would not become confidential at their original

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source (absent a court order) by virtue of records required by §§ 43-5-590 and 43-5-610 to be kept by DSS.

As to photographs from the files of the Department of Highways and Public Transportation, this Office examined the issue of disclosability under the Freedom of Information Act, § 30-4-10 et seq. by an opinion dated September 7, 1979. The only possible barrier to disclosure was felt to be § 30-4-40(a)(2), which would bar disclosure of records which would amount to an unreasonable invasion of personal privacy. Therein was stated:

... the subjects of the photographs have little or no claim that photographs are personal information or that the release of the photographs would constitute an unreasonable invasion of their privacy. A person's physical appearance is manifest whenever the person appears in public. Any person may make a photograph of any other person so long as the subject of the photograph has no reasonable expectation of privacy. Furthermore, a person's application for a driver's license waives whatever privacy rights he may have as to the State taking his picture because of the requirement of S.C. Code § 56-1-140 (1976), which requires that each driver's license shall contain a laminated color photograph of the licensee.

There being no reasonable expectation of privacy concerning one's physical appearance, it is the opinion of this office that the release of duplicate photographs from the driver's license negative file would be required under the S.C. Freedom of Information Act....

Of course, whether to release the photographs would be a decision to be made by the Department of Highways and Public Transportation. If that agency should release the photographs to DSS, the prior opinion seems to adequately address the notion of expectation of privacy. A copy of the opinion is enclosed.

In researching the various issues to determine whether such a project had been challenged in court or considered by any of the states' attorneys general, we located an opinion by the California Attorney General dated October 11, 1984, considering the issue of a district attorney publishing or causing to be published in a newspaper the names of absent parents for whom warrants of arrest have been issued for failure to provide child support when the purpose of such publication is to obtain public assistance in locating such absent parents. The California Attorney General responded affirmatively, noting that criminal complaints and arrest warrants had been

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filed in such cases and such were not made confidential by any statute. 2/ That opinion discussed many concerns such as tortious disclosure of old facts, privacy of the children involved, and other risks which could be attendant to such disclosure; a copy is enclosed for your review.

Conclusion

Based on the foregoing, while §§ 43-5-590 and 43-5-610 might prevent disclosure of facts from the relevant records of the child support enforcement unit of DSS for the proposed Ten Most Wanted Non-supporting Parents poster project, there would be no expectation of confidentiality with respect to a matter which is already a matter of public record. Thus, if the information is available from such sources as public records, even though the same material is in confidential DSS files, such publication would likely be permissible and not violative of §§ 43-5-590 and 43-5-610. It is our understanding that, as stated above, the information contemplated to be disclosed is generally available from public records.

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions

2/ It is noted that the project under consideration by DSS would require that warrants for the subjects of the poster be active, valid, and as yet still outstanding. A difference noted in the California proposal is that the subjects therein were being criminally prosecuted. Thus, the issues are somewhat related but not completely similar.