

The State of South Carolina



Office of the Attorney General

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August 5, 1992

James A. Quinn, Esquire
Deputy Chief Counsel
South Carolina Wildlife and
Marine Resources Department
Post Office Box 167
Columbia, South Carolina 29202

Dear Mr. Quinn:

You have requested the opinion of this Office as to how S.C. Code Ann. § 50-21-410 (1992), as to furnishing information from vessel numbering system records, is to be read in conjunction with the Freedom of Information Act, § 30-4-10 et seq. (FOIA). In particular, you have asked whether certain language of § 50-21-410 as discussed more fully below would prohibit the South Carolina Wildlife and Marine Resources Department from releasing information under an FOIA request when the request is not related to boating safety.

Section 50-21-410 provides the following:

Any person may request from the Division vessel numbering and registration information which is retrievable from vessel numbering system records of the issuing authority. When the Division is satisfied that the request is reasonable and related to a boating safety purpose, the information shall be furnished upon payment by such person of the costs of retrieval and furnishing of the information requested, except the entire file need not be sold or issued if the Division deems otherwise.

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This statute was most recently amended in 1972 by Act No. 1526, 1972 Acts and Joint Resolutions. Prior to amendment, the predecessor statute was § 70-295.32 of the 1962 Code and read simply: "All records of the [Boating] Division made or kept pursuant to this article shall be public records."¹

The current Freedom of Information Act, in § 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, in accordance with reasonable rules concerning time and place of access." Section 30-4-40 provides that certain matters are exempt from disclosure under the FOIA, including in part (a)(4) "[m]atters specifically exempted from disclosure by statute or law." Exceptions to the Act's applicability are to be narrowly or strictly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake County, 223 S.E.2d 580 (N.C. 1976). It should also be kept in mind that the "Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning the activities of the government. ... The General Assembly was dealing with ... the right of citizens to information about the operation of their government" Martin v. Ellisor, 264 S.C. 202, 205-206, 213 S.E.2d 732 (1975).

It appears that the General Assembly, in adopting § 50-21-410 and stipulating that requests for information thereunder be "reasonable and related to a boating safety purpose," has created a qualified exemption from or exception to the Freedom of Information Act. The Code section was amended in 1972 to restrict access to the information retrievable from vessel numbering system records; until the amendment, such records were specifically declared to be public records. Records of the type contemplated by

¹ The Freedom of Information statute in effect in 1972, § 30-3-30, provided in pertinent part:

Except as otherwise specifically provided by laws now in effect, or laws hereafter enacted to provide otherwise, all public records, as defined in § 30-3-20, shall be open to inspection and copying during the regular business hours of the custodian of the records.

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§ 50-21-410 are not so much records reflective of governmental activity as they are reflective of information about boat ownership or registration. When read with § 30-4-40(a)(4), it is reasonable to conclude that such records may be made public as long as the request is "reasonable and related to a boating safety purpose." § 50-21-410. If, for example, such a request is not for a boating safety purpose, § 30-4-40(a)(2) and § 50-21-410 would appear to exempt such information from mandatory disclosure.

Whether any such request is "reasonable" or is "related to a boating safety purpose" would be questions of fact which this Office cannot resolve by an opinion. Op. Atty. Gen. dated December 12, 1983. Such resolution would be up to the Boating Division of the Wildlife and Marine Resources Department or the appropriate trier of fact.

We trust that the foregoing has adequately responded to your inquiry. Please advise if additional assistance or clarification should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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