

# The State of South Carolina



## Office of the Attorney General

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ATTORNEY GENERAL

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August 26, 1987

Bruce E. Rippeteau, Director  
South Carolina Institute of Archaeology  
and Anthropology  
1321 Pendleton Street - USC  
Columbia, South Carolina 29208-0071

Dear Bruce:

I am in receipt of your letter in which you raised various questions regarding disclosure of certain information. Specifically you have stated that the South Carolina Institute of Archaeology and Anthropology in the course of its work collects information regarding the location of archaeological sites throughout the State. You have inquired as to your liability in releasing information regarding these archaeological sites that are on private lands.

The Freedom of Information Act defines a public record in part as

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

South Carolina Code of Laws, 1976, as amended, Section 30-4-20(c).

A public body is defined at Section 30-4-20(a) in part as

... any department of the State, any state board, commission, agency, and authority, any public or governmental body or political

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subdivision of the State ... or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds ...

The Institute of Archaeology is a part of the University of South Carolina. The Director of the Institute is also the designated State Archaeologist. The underwater activities of the Institute are covered by State statutes. South Carolina Code of Laws, 1976, as amended, Section 54-7-400 et seq. Therefore, it would appear that the Institute is a part of the University of South Carolina which is a public body and is in itself a public body. Records, therefore, not otherwise exempt by statute are deemed to be public records, subject to public disclosure.

Section 54-7-460(p) of the Code exempts the records kept by the Institute of underwater sites from the provisions of the Freedom of Information Act. There is no similar exemption for land sites as there is no statutory provisions regarding land archaeology.

The only possible exception in the Freedom of Information Act that would prohibit disclosure of information regarding this property is found at Section 30-4-40(2) which exempts

[i]nformation of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy...

Apparently, the information your records contain concerns archaeological sites on property not owned by the State, but by private individuals. That information once on file in your office is a public record unless its disclosure would constitute an "unreasonable invasion of personal privacy." As I am not aware of the exact information being released it would be impossible for this Office to advise you as to whether or not it would meet the personal exemption set out above and only you would be in a position to make this determination. However, it should be noted that this is a narrow exception. In determining when an invasion of privacy would be unreasonable a court in West Virginia in the case of Child Protection Group v. Cline, 350 S.E. 2d 541, at 543 (W. Va. 1986) stated that there were five factors to be considered;

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1. Whether disclosure would result in a substantial invasion of privacy and, if so, how serious?
2. The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.
3. Whether the information is available from other sources.
4. Whether the information was given with an expectation of confidentiality.
5. Whether it is possible to mould relief so as to limit the invasion of individual privacy.

Of course, it is the policy of this Office that where doubt exists, disclosure is advisable.

There is no provision in the Code for notification of a person that a freedom of information request has been made about that person. Likewise, there is no prohibition. Should you feel this would be a proper procedure to be employed, there would be no prohibition to notifying these persons as a courtesy, as long as you establish a uniform procedure for so doing.

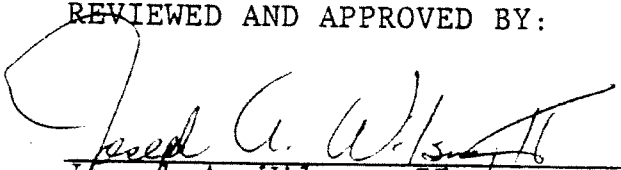
Sincerely yours,



Treva G. Ashworth  
Senior Assistant Attorney General

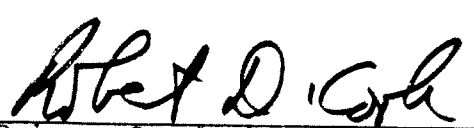
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REVIEWED AND APPROVED BY:



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