

9263/9813



ALAN WILSON  
ATTORNEY GENERAL

October 16, 2014

J. Martin Harvey, Esq.  
Allendale Town Attorney  
PO Box 705  
Barnwell, SC 29812

Dear Mr. Harvey:

This Office received your request for an opinion as to whether an individual member of a town council in a council form of government, without prior vote of a majority of council, has authority to independently review employee personnel files, cell phone records which are paid for by the town, and professional contract documents.

**LAW/ANALYSIS:**

An individual council member cannot act independently of a town council unless such authority is provided for by law. Instead, a municipal council can generally only act as a body. See Op. S.C. Atty. Gen., September 13, 2007 (2007 WL 4284633); Op. S.C. Atty. Gen., Op. No. 84-111, September 6, 1984 (1984 WL 159918).

However, a city council member has legislative duties, which include the gathering of information. We have formerly stated:

Courts have recognized that the scope of performance of a legislator's duties is not limited to those acts in a legislative assembly meeting. . . In addition, courts have concluded that other acts of a legislator, including informal as well as formal information gathering, are part of his or her legislative duties. In Williams v. Johnson, 597 F.Supp.2d 107,114 (D.D.C. 2009), the Court, per Kollar-Kotelly, J. stated as follows:

... the Supreme Court has never addressed whether the [Speech or Debate] Clause covers informal, as well as formal, information gathering by a legislator, and lower courts are divided on the question. See Jewish War Veterans [v. Gates]. 506 F.Supp. 30, 54 (D.D.C. 2007). The Court, however, agrees with the well-reasoned decision by Judge John D. Bates in Jewish War Veterans in which Judge Bates concluded that investigation and information gathering by a legislator - whether formally or informally conducted - is protected by the Speech or

Debate Clause “so long as the information is acquired in connection with or in aid of an activity that qualified as 'legislative' in nature.” 506 F.Supp.2d at 57. That is, the Court is persuaded that, regardless of whether conducted formally or informally, “the acquiring of information [is] an activity that is a 'necessary concomitant of legislative conduct and thus should be within the ambit of the privilege so that [legislators] are able to discharge their duties properly.’” Dominion Cogen [D.C. Inc. v. District of Columbia], 878 F.Supp. 258 (D.D.C. 1995) at 263; see also Alliance for Global Justice [v. District of Columbia], 437 F.Supp.2d 32 (D.D.C. 2006) at 36.

Op. S.C. Atty. Gen., June 19, 2013 (2013 WL 3362070).

Furthermore, we have concluded in prior opinions that a member of a municipal or county council has the ability to access records. “It is also worth noting that this Office has long been of the opinion that each member of a county or city council should be given access to all records of the county or city (whichever is applicable).” Id. In a prior opinion, we determined that a county council member who was conducting his own investigation and who sought to obtain personnel records of county employees directly from the personnel office instead of going through the County Administrator had the right to access the personnel records. Op. S.C. Atty. Gen., August 18, 1983 (1983 WL 181974).

In another opinion, we concluded that a mayor could not stop members of a town council from obtaining minutes of the meetings and copies of contracts. Our reasoning was that “[a] member of a governing body of an entity needs access to the records of such entity to be able to do the job he or she was elected to do.” We also reasoned that minutes of all proceedings of public bodies, except for those closed to the public, as well as information in contracts dealing with receipt or expenditure of public funds by public bodies are public information under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* Op. S.C. Atty. Gen., September 23, 1997 (1997 WL 665446).

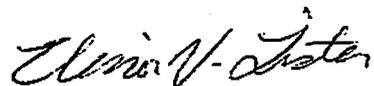
Our State Supreme Court clarified the documents which could be reviewed by council members in Wilson v. Preston, 378 S.C. 348, 662 S.E.2d 580 (2008). The Court held that an “Administrator cannot deny a council member access to county financial documents” but that “the law does not require the Administrator to give the documents to a single council member in any particular manner.” However, the Court found that an individual council member cannot review attorney-client privileged documents unless the entire council waives the attorney-client privilege.

### CONCLUSION

As a result of the aforesaid, we believe that a council member, regardless of the form of city or county government, should have access to personnel records and financial documents, such as cell phone records which are paid for by the town and professional contract documents, in order to gather information.

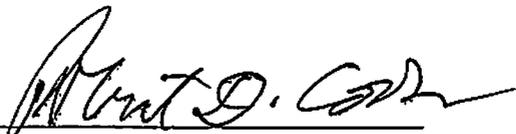
J. Martin Harvey, Esq.  
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Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General