

1984 S.C. Op. Atty. Gen. 63 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-22, 1984 WL 159830

Office of the Attorney General

State of South Carolina

Opinion No. 84-22

February 24, 1984

\*1 V. C. Traywick, Jr.  
Assistant Comptroller General  
Office of the Comptroller General  
Post Office Box 11228  
Columbia, South Carolina 29211

Dear Vic:

Upon your request, I have reviewed the applicable statutes relating to Department of Mental Health records which contain patient identifying data and I conclude that such records are confidential by law and are not subject to public disclosure pursuant to the Freedom of Information Act.

[Section 44-23-1090, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, in pertinent part provides '[a]ll . . . records and reports made for the purpose of [Chapter 23 of Title 44] Chapter 9, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17 or Chapter 27, and directly or indirectly identifying a patient or trainee or a former patient or trainee . . . shall be kept confidential . . .'. The Chapters designated therein include, essentially, all provisions of the South Carolina Code relating to the South Carolina Department of Mental Health. Thus, it appears that the General Assembly intended that any and all documents or records which identify a person either directly or indirectly as a patient or expatient of the Department are to be impressed by law with confidentiality.<sup>1</sup> A fair reading of [§ 44-23-1090](#) reveals nothing therein which limits the application of this provision to patient records maintained by the Department of Mental Health and thus, it appears consistent with the intended purpose of the Act, that is to protect the privacy of patients and expatients of the Department, that such identifying records retain their confidentiality regardless of who maintains the records.

The South Carolina Freedom of Information Act denotes most records maintained by State Government as 'public records' and thus subjects such records to disclosure pursuant to that Act. [Sections 30-4-10, et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (1983 Cum.Supp.). However, § 30-4-20(c) provides:

'Public record' includes 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. Records such as income tax returns, medical records, hospital medical staff records, reports, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter . . . [Emphasis added]

In addition, § 30-4-40(a)(4) exempts from public disclosure '[m]atters specifically exempted from disclosure by statute or law.'

As heretofore noted, records of the Department of Mental Health which identify patients or ex-patients are confidential by law, regardless of whether these records are maintained by the Department of Mental Health or the office of Comptroller General. Thus, I would advise that records of the Department of Mental Health which identify patients or ex-patients provide to the Office of the Comptroller General in the regular operation of its business and maintained therein are not subject to disclosure pursuant to the Freedom of Information Act.

Very truly yours,

\*2 Edwin E. Evans  
Senior Assistant Attorney General

Footnotes

- 1 [Section 44-23-1090](#) makes unauthorized disclosure a misdemeanor.  
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