

1984 S.C. Op. Atty. Gen. 132 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-53, 1984 WL 159860

Office of the Attorney General

State of South Carolina

Opinion No. 84-53

May 10, 1984

*1 David Hill Keller, Esquire
Staff Attorney
State Workers' Compensation Fund
800 Dutch Square Boulevard, Suite 160
Columbia, South Carolina 29210

Dear Mr. Keller:

By your letter of April 2, 1984, you have asked whether the records of your agency, the State Workers' Compensation Fund, would be public records as defined by the Freedom of Information Act, [Section 30-4-10 et seq., Code of Laws of South Carolina](#) (1983 Cum.Supp.) (“FOIA” or “the Act”), and of the two types of records maintained by your agency, which, if either, would be discoverable under a Freedom of Information Act inquiry. You have advised that the two types of records possibly subject to an inquiry are (1) those records of cases in which a hearing was held before the Industrial Commission and an award was made and (2) those records of cases in which no hearing was held.

At the outset, it may be noted that in enacting South Carolina's Freedom of Information Act, the General Assembly made the following findings:

... it is vital in a democratic society that public business be performed in an open and public manner as it conducts its business so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, this act is adopted, making it possible for citizens, or their representatives, to learn and report fully the activities of their public officials. [Emphasis added.]

In view of the legislative purpose, this Office has recently noted that the Freedom of Information Act “is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly.” Ops.Atty.Gen. dated February 22, 1984 and August 8, 1983.

Without question, the State Workers' Compensation Fund (“the Fund”) would be a public body to which the FOIA would apply. The Act, in Section 30-4-20(a), defines a “public body” as “... any state ... agency ... supported in whole or in part by public funds or expending public funds...” [Section 42-7-10 of the Code](#), establishing the Fund, provides in part, “There is established as a separate agency of State government a special fund to be known as the State Workmen's [now Workers'] Compensation Fund.”

Records maintained by the Fund would generally appear to be “public records” as that term is defined by Section 30-4-20(c) of the Act:

“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....

Each document contained in a given file, while generally considered a public record, must be examined to determine whether it may be exempt from disclosure by provisions of the FOIA or some other statute, since the FOIA does not open to the public a document or other record which is required by law to be confidential. Section 30-4-20(c) also provides:

***2** ... Records such as income tax returns, medical records, hospital medical staff 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 nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, conclude that the public interest is best served by not disclosing them....

An examination of the statutes pertaining to the Fund does not reveal any statute which confers confidentiality upon the records of the Fund. By contrast, the General Assembly has elected to treat as confidential the records of the Industrial Commission, see [Section 42–19–40 of the Code](#), and of other state agencies such as the Department of Mental Health, see [Section 44–17–130](#), and Mental Retardation, see [Section 44–21–230](#). Because the General Assembly has chosen to specify by statute the state agencies and commissions the records of which are to remain confidential, it must be presumed that the legislature intended that the records of other agencies unaddressed by statute not be confidential. 2A Sutherland Statutory Construction § 47.23; [Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1938). Thus, this Office concludes that the records maintained by the Fund would not be confidential generally, and unless subject to an exemption within the Act itself would be public information.¹

The FOIA contains certain exemptions from disclosure, which are generally construed narrowly. [News and Observer Publishing Co. v. Interim Board of Education for Wake County](#), 29 N.C.App. 37, 223 S.E.2d 580 (1976). Exemptions which may be applicable to a particular record of the Fund include the following portions of Section 30–4–40(a):
The following matters may be exempt from disclosure under the provisions of this chapter:

* * *

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.

* * *

(4) Matters specifically exempted from disclosure by statute or law.

* * *

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

* * *

To determine whether an exemption may apply as to a particular record, the contents of the file should be examined individually. You have indicated that a typical file contains Industrial Commission forms, medical records, investigative reports, correspondence, and miscellaneous documents. Investigative reports and correspondence could conceivably be exempt under Section 30–4–40(a)(7), *supra*. The remaining documents, including medical records, should be scrutinized to determine whether personal privacy would be unreasonably violated if such documents were disclosed to the public, under Section 30–4–40(a)(2), *supra*. As to medical and similar records, if it may be said that such records “contain ‘intimate details’ of a ‘highly personal’

nature,” the exemption of such records under Section 30–4–40(a)(2) may certainly be warranted if an unreasonable invasion of personal privacy would result. [Robles v. Environmental Protection Agency](#), 484 F.2d 843, 845 (4th Cir.1973).

*3 For a record or portion thereof to be exempt under the personal privacy exemption, Section 30–4–40(a)(2), the invasion must be unreasonable. The Fourth Circuit Court of Appeals, in construing a similar provision in the federal Freedom of Information Act, ² 5 U.S.C. § 552 et seq., stated that “in determining the issue whether a disclosure would constitute a ‘clearly unwarranted invasion of personal privacy’, they should ‘tilt the balance in favor of disclosure.’ ” [Robles v. Environmental Protection Agency](#), 484 F.2d at 846. Because the South Carolina and federal statutes are similar, the reasoning of the Robles court could be followed in this instance to conclude that public disclosure in doubtful cases is favored.

We would point out that where an exemption from disclosure is applicable to a particular record, such an exemption is, of course, capable of being waived. For example, the attorney-client privilege belongs to the client, not the attorney, and may be waived by the client. [State v. Love](#), 275 S.C. 55, 271 S.E.2d 110 (1980). And where a claimant's right of privacy is involved, that right may be waived in whole or in part, expressly or by implication, by his own actions or words or by those persons who are authorized by him or by law to act in his behalf. [Doe v. Sears](#), 245 Ga. 83, 263 S.E.2d 119, 122 (1980).

In conclusion, this Office would advise that the public records maintained by the State Workers' Compensation Fund do not appear to be confidential and would be subject to disclosure under the Freedom of Information Act unless exempt under a provision of [Section 30–4–40 of the Code](#). We would further advise that exemptions to the Act are to be construed narrowly, in keeping with the spirit and purpose of the Act.

We must advise that we have not examined the contents of the file in question and thus do not make any judgment as to whether any portion of the file may be exempt from disclosure. Please advise us if we may assist you further.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- 1 Your request differentiated records of cases in which a hearing was held and an award made from those cases in which no hearing was held. Because the General Assembly has not chosen to make any records of the Fund confidential, there is no apparent reason to treat the two types of files differently.
- 2 See [5 U.S.C. § 552\(b\)\(6\)](#) which states that the section of the Act pertaining to availability of public information does not apply to “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” (Emphasis added.)

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