

1981 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-60, 1981 WL 96586

Office of the Attorney General

State of South Carolina

Opinion No. 81-60

June 24, 1981

**\*1 SUBJECT: Public Information; Complaints Against Attorneys**

A grievance file of the Board of Commissioners on Grievances and Discipline is not public information unless the proceeding has been made public at the request of the respondent attorney or the investigation is predicated upon a conviction of the attorney for a crime or upon public discipline imposed upon the attorney in another jurisdiction.

TO: Board of Commissioners on Grievances and Discipline

QUESTION PRESENTED:

Whether materials from the files of the Board of Commissioners on Grievances and Discipline must be made available to the complaining party or other interested person under the Freedom of Information Act?

OPINION:

The South Carolina 'Freedom of Information Act' (FOIA), provides in [Section 30-4-30 of the 1976 Code](#) that '[a]ny person has the right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40 . . .'. A 'public body' is defined as 'any department of the State, any state board, commission, agency and authority, any public or governmental body . . .', [Section 30-4-20\(a\), 1976 Code](#). The Board of Commissioners on Grievances and Discipline would fall within this definition and, therefore, the FOIA would be applicable to the Board.<sup>1</sup> The question, therefore, is whether: (1) the Board's grievance files are 'public records'; and/or (2) are they exempt from disclosure under Section 30-4-40.

[Section 30-4-20\(e\)](#), in defining 'public records', provides, *inter alia*, that:

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. . . . (Emphasis added.)

In this regard, the South Carolina Supreme Court's Rule on Disciplinary Procedure, Section 20A, provides:

All records and proceedings involving allegations of misconduct by an attorney shall be confidential and shall not be disclosed unless:

(1) The Respondent shall in writing request that they be public;

(2) The investigation is predicated upon a conviction of the respondent for a crime or upon public discipline imposed upon the Respondent in another jurisdiction, in which case the entire file pertaining to the crime or the public discipline, other than the work product and internal memoranda of the disciplinary agency, shall be public.

The rules of the South Carolina Supreme Court carry the force and effect of law. See, [Sections 40-5-20](#) and [40-5-50, 1976 Code](#). Therefore, since Section 20 closes the Board's grievances files to the public, such files are not 'public records' within the meaning of [Section 30-4-20\(c\)](#).

Furthermore, it should be noted that Section 3-4-40(2) and (4) exempts from disclosure:

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

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\*2 (4) Matters specifically exempted from disclosure by statute or law.

It would appear that grievance files would be exempt under these provisions even if they were 'public records'.

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#### Footnotes

- 1 The federal 'Freedom of Information Act, [5 U.S.C. § 551](#), et. seq., is not applicable, since the Board of Commissioners on Grievances and Discipline is not an agency of the United States Government as defined in [5 U.S.C. § 551\(1\)](#).  
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