

1976 WL 30760 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 The South Carolina Freedom of Information Act does not require disclosure of certain items in personnel files of public employees.

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QUESTION PRESENTED:

Does the South Carolina Freedom of Information Act require disclosure of personnel files on law enforcement officers?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Section 1-20 et seq.,

Cooper, et al., v. Richland School District One, et al., Memorandum of Opinion and Order, filed January 23, 1976, Richland County Court of Common Pleas.

DISCUSSION OF ISSUES:

The question has been presented as to whether or not confidential personnel files of law enforcement officers are subject to disclosure under the South Carolina Freedom of Information Act, Code Section 1-20, et seq. Such personnel files contain evaluation reports, letters of reprimand, probation and suspension, among other items.

The aforementioned items in a public employee's personnel file would not be subject to disclosure. These items include information relating to potential job eliminations, reassignments of positions and salary calculations, subjects which are proper for nonpublic executive session discussion by the agency.

My opinion is based on the Order of Judge Moss in the Cooper, et al., case, supra, currently under appeal to the South Carolina Supreme Court. Judge Moss found that Sections 1-20.1 and 1-20.3 of the Act must be construed together in order to determine the true intent and spirit of the Act. Therefore, if an item in a personnel file is appropriate for discussion in executive session under Section 1-20.3, then it is not discoverable under Section 1-20.1.

However certain elements in a personnel file would be subject to public disclosure, if they were not appropriate for executive session. These include by way of example an employee's name, salary and date of employment.

Also, Section 1-20.1 of the Act excludes from the definition of public records the following:

. . . nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public.

The determination that disclosure is not in the public interest must be made by each public agency, based on the unique facts and circumstances involved in a particular case. The public interest exception must be narrowly construed to avoid becoming only a device to avoid the intent of the Act. It should be applied only where a clear and significant public interest can be shown to be advanced by non-disclosure.

CONCLUSION:

A public agency would not be required to disclose certain items in an employee's personnel file. These items include information relating to job elimination, reassignment of positions and salary calculations. The 'public interest' exception to disclosure should be narrowly applied, and should not be used to frustrate the intent of the Act.

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