ALAN WILSON
ATTORNEY GENERAL

October 18, 2016

The Honorable Hugh E. Weathers
South Carolina Department of Agriculture
P.O. Box 11280
Columbia, SC 29211

Dear Commissioner Weathers:

Attorney General Alan Wilson has referred your letter dated September 13, 2016 to the Opinions section regarding whether the privacy exemption to the South Carolina Freedom of Information Act ("FOIA"), S.C. Code. Ann. §§ 30-4-10 et seq., allows the South Carolina Department of Agriculture ("Department") to withhold information submitted by grant applicants for financial assistance under the "Farm Aid Bill" pursuant to S.C. Code Ann. § 46-1-160. Your opinion request describes the grant program as follows:

> The Farm Aid Bill created the "South Carolina Farm Aid Fund," separate and distinct from the general fund and all other funds, and appropriated $40,000,000 for its purposes. The Department of Agriculture is responsible for administering the grant program, with assistance from the Department of Revenue. All payments are being processed using the normal state payment procedures through the Comptroller General and the State Treasurer's offices. Subsection (B)(1) of the Farm Aid Bill provides, "The Department of Agriculture shall administer the grant program authorized by this section. The Department of Revenue shall assist the Department of Agriculture in the administration of the grant program by providing auditing services, accounting services, and review and oversight of all financial aspects of the grant program." S.C. Code Ann. § 46-1-160(B)(1). The Farm Aid Bill also created the "Farm Aid Advisory Board" "to make recommendations to the department regarding the duties of the department in administering the grant program." Id.
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> One of the Board's first and primary duties was to "recommend an application process by which a person with a loss resulting from the flooding in October 2015 may apply for a grant." S.C. Code Ann. § 46-1-160(B)(2). Subsection (B)(4) prescribes several general guidelines for the Department of Agriculture to follow in determining loss for purposes of award calculation and distribution, including the collection of detailed confidential financial information for all applicants:
>
> > (B)(4) To determine loss, the department:
> > (a) must measure the person's cumulative total loss of all affected agriculture commodities for 2015 against the person's expected production of all agricultural commodities affected by the flood in 2015;

> (b) shall use the person's applicable actual production history yield...; and
> (c) may require any documentation or proof it considers necessary to efficiently administer the grant program, including the ownership structure of each entity and the social security numbers of each owner. Minimally, in order to verify loss, the department shall require the submission of dated, signed, and continuous records. These records may include, but are not limited to, commercial receipts, settlement sheets, warehouse ledger sheets, pick records, load summaries, contemporaneous measurements, truck scale tickets, contemporaneous diaries, appraisals, ledgers of income statements or deposit slips, cash register tape, invoices for custom harvesting, u-pick records, and insurance documents.

S.C. Code Ann. § 46-1-160(B)(4).

In accordance with the provisions of Subsection (B)(4), the Department of Agriculture/Farm Aid Advisory Board devised a detailed application process, with separate applications for row crops, fruits and vegetables, and "other" crops. Each of these applications required the individual farmers to disclose a substantial amount of personal and financial information, both on the application itself and in supplemental documentation.... This personal/financial information was essential to the Department of Agriculture and the Department of Revenue in determining the eligibility of each applicant, calculating the respective grant awards, and otherwise ensuring the integrity of the grant program; however, if released to the public, this information would reveal generally protected financial information and could be used to calculate the personal income of every eligible farmer in the state.

The Department of Agriculture intends to publish and make available for public inspection the number of applications, number of acres, and amount of aid granted per county, and to release the award amount for each applicant upon written request. However, the Department is hesitant to release in full the very detailed and sensitive data each farmer submitted in the application process, as such disclosure would reveal the farmer's private personal financial information...

(emphasis added). You have also included a copy of the grant application packet as an attachment to the opinion request. As part of the application packet, applicants must submit a signed affidavit certifying that the information provided is accurate and acknowledging that the information provided could be disclosed under the FOIA.[1]

[1] Affidavit, paragraph 9 reads as follows:

> I understand that the information contained herein, and in the accompanying application (and any documentation provided in connection with the application) for a grant under the South Carolina Farm Aid Fund may be subject to disclosure under the provisions of the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et. seq.

In additional to the information described in the opinion request, the Farm Aid Bill details further eligibility requirements, award limits, and directs how funds are apportioned under varying scenarios. Subsection (B)(3)(a) outlines the parameters of the grants awards as follows:

> Each grant awarded by the department may not exceed twenty percent of the person's verifiable loss of agricultural commodities. However, a person, including any grant made to a related person, may not receive grants aggregating more than one hundred thousand dollars. Also, a person, including any grant made to a related person, may not receive grants that when combined with losses covered by insurance, exceed one hundred percent of the actual loss. If a grant is made to a related person, the amount to be included in the limits set by this section must be the amount of the grant multiplied by the person's ownership interest in the related person....

S.C. Code Ann. § 46-1-160(B)(3)(a). Further, "[i]f the total amount of grants allowed pursuant to subitem (a) exceeds the monies in the fund, then each person's grant must be reduced proportionately." S.C. Code Ann. § 46-1-160(B)(3)(b). However, if funds remain after fully awarding all approved grants, those funds are designated to "lapse to the general fund." S.C. Code Ann. § 46-1-160(E)(2). The General Assembly also mandated prosecution and required recipients to refund their entire grant amounts to deter applicants from providing false information to receive excessive grant awards.[2]

With this background in mind, we turn to the specific question presented in this opinion request. The question reads as follows:

> Under the South Carolina FOIA, can the Department of Agriculture withhold or redact from subject applications information such as sales numbers, acreage, loss, indemnities, sales receipts, purchase receipts, insurance claims, and notices of loss, which could be used to calculate an individual applicant's income and personal financial standing?

Short Answer

It is this Office's opinion that a court would likely find the Department must disclose the application information identified in the opinion request if requested under the FOIA because, as the Department stated, such information was "essential" to determining the eligibility of each applicant, calculating the respective grant awards, and otherwise ensuring the integrity of the grant program. The

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[2] S.C. Code Ann. § 46-1-160(D)(1)-(2).

> (D)(1) If the department determines that a person who received a grant provided inaccurate information, then the person shall refund the entire amount of the grant. If the department determines that a person who received a grant used the funds for ineligible expenses, then the person must refund the amount of the ineligible expenses. If the person does not refund the appropriate amount, the Department of Revenue shall utilize the provisions of the Setoff Debt Collection Act to collect the money from the person.
> (2) If the department determines that a person knowingly provided false information to obtain a grant pursuant to this section or knowingly used funds for ineligible expenses, the person shall be subject to prosecution pursuant to Section 16-13-240.

Supreme Court of South Carolina has held even where an exemption to the FOIA applies, it "create[s] no duty of confidentiality... The exemptions impose no duty not to disclose but simply allow the public agency the discretion to withhold exempted material from disclosure." S.C. Tax Comm'n v. Gaston Copper Recycling Corp., 316 S.C. 163, 169, 447 S.E.2d 843, 846 (1994). This Office notes that the Department may seek a declaratory judgment to definitively determine whether an exemption to the FOIA applies to the information it seeks to protect from disclosure. Id. at 844. Please note that even if a court were to find the privacy exemption applicable, the Department would still maintain its discretion to disclose the information sought by a FOIA request. Id.

Law/Analysis

I. South Carolina Freedom of Information Act: Balancing Personal Privacy and Public Interest in Disclosure

The General Assembly described its findings and the purpose of the FOIA as follows:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner 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, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (1976 Code, as amended) (emphasis added).

Section 30-4-30(a) states that "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." "Public Body" is defined, in part, to include "any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State..." S.C. Code Ann. § 30-4-20(a). Because Section 1-30-10 includes the Department of Agriculture within the executive branch of the state government, the Department is a public body as defined in the FOIA. "Public record" is defined to include "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...." S.C. Code Ann. § 30-4-20(c).[3] It is this Office's opinion, and the opinion request appears to concede, that a court would likely find the subject grant applications to be public records.

However, as noted above, Section 30-4-40(a) lists matters which are exempted from disclosure. The opinion request suggests that Section 30-4-40(a)(2) would be applicable to a FOIA request for the information submitted as part the grant applications. This section exempts the following:

[3] Section 30-4-20(c) excludes records which would otherwise be included within the "public record" definition if kept by certain bodies which are inapplicable to this opinion.

> Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

S.C. Code Ann. § 30-4-40(a)(2) (emphasis added).

We turn to our state case law for guidance on interpreting whether the information the Department seeks to protect from disclosure would fall within the privacy exemption to the FOIA. The Supreme Court of South Carolina has repeatedly stated that the "FOIA creates an affirmative duty on the party of public bodies to disclose information. The purpose of the Act is to protect the public by providing for disclosure of information." Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991); see also Campbell v. Marion County Hosp. Dist., 354 S.C. 274, 280 580 S.E.2d 163 (2003) ("The essential purpose of FOIA is to protect the public from secret government activity."); Weston v. Carolina Research & Dev. Found., 303 S.C. 398, 401, 401 S.E.2d 161, 164 (1991) ("Here, we are dealing with the South Carolina FOIA which mandates that the public be provided with information regarding the expenditure of public funds."); Burton v. York Cty. Sheriff's Dep't, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). The Court has also found that "[t]he FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature." Campbell, 354 S.C. at 281; Burton, 358 S.C. at 347. "However, the exemptions from disclosure contained in §§ 30-4-40 and 30-4-70 do not create a duty of nondisclosure. These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure." Campbell, 354 S.C. at 281 (internal citations omitted); Bellamy, 304 S.C. at 295.

The Court explained that "the determination of whether documents or portions thereof are exempt from FOIA must be made on a case-by-case basis, and the exempt and non-exempt material shall be separated and the nonexempt material disclosed." Evening Post Pub. Co. v. Berkeley Cty. Sch. Dist., 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011); Burton, 358 S.C. at 348; Op. S.C. Atty. Gen., 2007 WL 4284629 (November 6, 2007). Further, exemptions from the FOIA are to be narrowly construed in order to "guarantee the public reasonable access to certain activities of the government." Id. at 83; Burton, 358 S.C. at 348 ("Indeed, consistent with FOIA's goal of broad disclosure, the exemptions from its mandates are to be narrowly construed."). A public body which seeks to invoke a FOIA exemption bears the burden of establishing that the exemption applies. Evening Post Pub. Co., 392 S.C. at 83; Seago v. Horry Cty., 378 S.C. 414, 423, 663 S.E.2d 38, 42 (2008).

In Burton, the South Carolina Court of Appeals described the conflicting considerations at issue in applying the FOIA privacy exemption as follows:

> Section 30-4-40(a)(2) does not specifically list or define the types of records, reports, or other information that should be classified as personal or private information exempt from disclosure. We must, therefore, resort to general privacy principles, which

> examination involves a balancing of conflicting interests-the interest of the individual in privacy on the one hand against the interest of the public's need to know on the other.
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> Our Supreme Court has defined the "right to privacy" as the right of an individual to be let alone and to live a life free from unwarranted publicity. Sloan v. South Carolina Dep't of Pub. Safety, 355 S.C. 321, 586 S.E.2d 108 (2003). However, "'one of the primary limitations placed on the right of privacy is that it does not prohibit the publication of matter which is of legitimate public or general interest.' " Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 566, 324 S.E.2d 313, 315 (1984) (quoting Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956)). Indeed, the Court has held that, as a matter of law, "if a person, whether willingly or not, becomes an actor in an event of public or general interest, 'then the publication of his connection with such an occurrence is not an invasion of his right to privacy.' "

Id. at 352; Glassmeyer v. City of Columbia, 414 S.C. 213, 220, 777 S.E.2d 835, 839 (Ct. App. 2015), reh'g denied (Oct. 29, 2015). The court in Burton affirmed that the records sought under FOIA could not be excluded under the privacy exemption because the vital public interest in assessing the performance of public duties outweighed the individuals' desire to remain out of the public eye. Id.

Because the application of a FOIA exemption is determined on a case-by-case basis, such a finding will necessarily depend on what information is sought to be disclosed in the FOIA request and whether the information sought is connected to an "event of public or general interest." See Brown v. Perez, No. 15-1023, 2016 WL 4501821, at *6 (10th Cir. Aug. 29, 2016) ("The scope of a privacy interest under Exemption 6 will always be dependent on the context in which it has been asserted...."). As this Office is not empowered to determine factual questions, we cannot decisively state whether an exemption would authorize the Department to withhold information otherwise subject to the FOIA. See Op. S.C. Atty. Gen., 2015 WL 4497734 (July 2, 2015) ("[A]s we have cautioned in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts."). With this limitation in mind, we provide this Office's opinion on the interpretation of the legal authorities in regard to your request.

II. Analogous Federal Freedom of Information Act Cases

While we are unaware of South Carolina case law specifically addressing privacy rights in regards to the categories of information at issue in this opinion, we have found federal case law interpreting the federal Freedom of Information Act, 5 U.S.C. § 552, where similar information was requested from the U.S. Department of Agriculture ("USDA"). See Bellamy, 305 S.C. at 295 (finding analysis of federal FOIA applicable by analogy to the South Carolina FOIA); Op. S.C. Atty. Gen., 2005 WL 1383358 (May 18, 2005) ("[W]e have relied upon similar federal case law interpreting the Federal Freedom of Information Act to interpret the South Carolina's Freedom of Information Act where a purported privacy interest is involved.").

In Multi Ag Media LLC v. Dep't of Agric., 515 F.3d 1224 (D.C. Cir. 2008)[4], the D.C. Circuit addressed whether the privacy exemption to the federal FOIA, 5 U.S.C. § 552(b)(6), allowed the USDA to withhold information submitted by farmers for agricultural subsidies and other financial assistance

[4] In Ctr. for Biological Diversity v. U.S. Dep't of Agric., 626 F.3d 1113 (9th Cir. 2010), the Ninth Circuit held that Global Position System (GPS) coordinates were made exempt from disclosure under the federal FOIA by subsequent legislation codified at 7 U.S.C. § 8791(b)(2)(A)-(B).

programs. The requestor sought information contained in thirteen databases which were maintained by the Farm Service Agency ("FSA") within the USDA. The FSA released a portion of the requested information, but withheld other information which it claimed contained private information about individual farmers protected by FOIA exemption 6. Id. at 1226. In particular, the request sought information contained in the FSA's Compliance file and the Geographic Information System ("GIS") database. The court described the type of information contained in both the Compliance file and the GIS database as follows:

> The Compliance File is a massive database with information on crops and field acreage for hundreds of thousands of individual farms across the country. It contains crop data that agricultural producers report to FSA to establish their eligibility for the government's subsidy and benefit programs. In response to Multi Ag's FOIA request, USDA withheld information on irrigation practices, farm acreage, and the number and width of rows of tobacco and cotton.
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> ...
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> The GIS database provides farm data on a digitized aerial photograph. USDA uses GIS as part of a system that combines Global Positioning System technology and aerial photographs to calculate acreage, identify crop types, and create maps of farmland. The GIS database helps FSA verify farm features and thereby monitor compliance with regulations governing farm benefits... USDA released much of the GIS database to Multi Ag, but withheld information on farm, tract, and boundary identification, calculated acreage, and characteristics of the land such as whether it is erodible, barren, or has water or perennial snow cover.

Id. at 1226-27. The court found that the information in both the Compliance file and the GIS database constituted "similar files" to the "personal and medical files" which are exempted from disclosure when release of such files "would constitute a clearly unwarranted invasion of personal privacy." Id. at 1229. The court also found that the information about crops on farms which are individually owned or closely held "would necessarily reveal at least a portion of the owner's personal finances." Id.

While the court held that the farmers had a "substantial privacy interest," it cautioned that finding such an interest does not conclude the analysis under the federal FOIA when it stated the following:

> Our use of the word substantial in this context means less than it might seem. A substantial privacy interest is anything greater than a de minimis privacy interest. Id. Finding a substantial privacy interest does not conclude the inquiry; it only moves it along to the point where we can "address the question whether the public interest in disclosure outweighs the individual privacy concerns."

Id. at 1229-30. The court found that there was a "substantial public interest" in disclosure of the information sought in both the Compliance file and the GIS database based on the following analysis:

> FSA uses this information in making subsidy and benefit determinations, and the public has a significant interest in being able to look at the information the agency had before it

> when making these determinations so that the public can monitor whether the agency is correctly doing its job.
> ...
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> [T]here is a special need for public scrutiny of agency action that distributes extensive amounts of public funds in the form of subsidies and other financial benefits. Brock v. Pierce County, 476 U.S. 253, 262, 106 S.Ct. 1834, 90 L.Ed.2d 248 (1986) ("[T]he protection of the public fisc is a matter that is of interest to every citizen."); News–Press v. U.S. Dep't of Homeland Sec., 489 F.3d 1173, 1192 (11th Cir.2007) ("easily" concluding that there is a substantial public interest under FOIA Exemption 6 in "learning whether FEMA is a good steward of (sometimes several billions of) taxpayer dollars in the wake of natural and other disasters"); United States v. Suarez, 880 F.2d 626, 630 (2d Cir.1989) ("[T]here is an obvious legitimate public interest in how taxpayers' money is being spent, particularly when the amount is large.").

Id. at 1231-32. The court concluded in unambiguous terms that the significant public interest in disclosure outweighed the personal privacy interests the USDA sought to protect as follows:

> In sum, given USDA's rather tepid showing that release of the files would allow the public to draw inferences about some farmers' financial circumstances, the interest in data that would allow the public to more easily monitor USDA's administration of its subsidy and benefit programs, and FOIA's presumption in favor of disclosure, we conclude that the public interest in disclosure of the Compliance file and GIS database outweighs the personal privacy interest.

Id. at 1233.

In News-Press v. U.S. Dep't of Homeland Sec., 489 F.3d 1173 (11th Cir. 2007), the Eleventh Circuit weighed the recipients of Federal Emergency Management Agency ("FEMA") disaster relief funds privacy interests against the public interest in understanding the operations of the government. In 2004, FEMA disbursed $1.2 billion in disaster assistance to "more than 605,500 Floridians, and also paid out claims to tens of thousands of individuals whose structures were insured under FEMA's National Flood Insurance Program." Id. at 1179. By June of 2005, FEMA had commenced "6,579 recoupment actions to recover more that $27 million as the result of duplicate payments or overpayments to Floridians during 2004." Id. at 1185. The court specifically noted that FEMA payments "duplicated payments from private insurance companies, and in other cases FEMA payments duplicated themselves. In still other cases, damage was not disaster-related." Id. at 1204, n.11.

The requestors sought data under the federal FOIA related to the awards including applicants' names and addresses. FEMA responded to the FOIA requests, but redacted the names and addresses from the data it provided on the grounds that disclosing this information "would constitute a clearly unwarranted invasion of personal privacy" within the meaning of Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). Id. at 1177-78. The court held that the applicants' addresses were not exempt under the privacy exception, but the applicants' names could be withheld. The court explained:

> [S]trict comparisons of totals between counties, as opposed to individuals, does not take into consideration the multitude of other factors, such as insurance and income levels,

> which can preclude registrants from receiving FEMA aid. Senate Hearings (written statement of Brown at 8–9) (emphasis added).
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> ...
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> If it would not constitute good stewardship of taxpayer dollars simply to make decisions about disaster aid based on zip code, then neither can zip codes be seen as an altogether accurate or complete way for the public to evaluate FEMA's distribution of aid... We conclude that faced with a choice of disclosing the aid information by zip code or by street address, the latter must prevail.

Id. at 1195-96.

> In order to affirm withholding the addresses, we would have to find that the privacy interests against disclosure are greater than the public interest in disclosure.... This we cannot do. Quite simply, the disclosure of the addresses serves a powerful public interest, and the privacy interests extant cannot be said even to rival this public interest, let alone exceed it, so that disclosure would constitute a "clearly unwarranted" invasion of personal privacy. On this record we do not find the balancing calculus to be particularly hard.

Id. at 1205. In contrast, the court found that disclosing individual applicants' names would not be "probative" as they would not provide "further insights into the operations of FEMA" beyond that provided by disclosing addresses. Id. at 1205.[5]

When considered together, News-Press and Multi Ag Media LLC provide guidance for determining whether the privacy exemption in the South Carolina FOIA applies to the Farm Aid Bill applicants' information which the Department seeks to protect from disclosure. Multi Ag Media LLC found that farmers have a significant privacy interest in the information which the Department seeks to protect, including acreage and crop types. News-Press found that disaster relief recipients have significant privacy rights in the information provide in their aid applications, including their names and addresses. Yet, the information which applicants have a significant privacy right may still be disclosed, according to the federal FOIA, if the disclosure of such information would not amount to a "clearly unwarranted invasion of personal privacy" measured against the public interest in the disclosure. Where the disclosure of the information speaks directly to the statutory obligations of the public body, courts have found the public interest outweighs the individual privacy interest. News-Press, 489 F.3d at 1206 ("The public interest in evaluating the appropriateness of FEMA's response to disasters is not only

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[5] See Consumers' Checkbook, Ctr. for the Study of Servs. v. U.S. Dep't of Health & Human Services, 554 F.3d 1046 (D.C. Cir. 2009) ("[W]e fail to see how the requested data will allow the public to evaluate the performance of any specific quality-promoting programs CMS has a statutory duty to undertake."); Sheet Metal Workers Int'l Ass'n, Local No. 9 v. United States Air Force, 63 F.3d 994 (10th Cir. 1995) quoting U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 756 (1989) ("[The public interest] does not encompass an interest in the 'disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.'"); Seized Prop. Recovery, Corp. v. U.S. Customs & Border Prot., 502 F.Supp.2d 50 (D.D.C. 2007) ("In order to serve the public interest contemplated by FOIA, disclosure must "shed light on an agency's performance of its statutory duties.").

precisely the kind of public interest that meets the FOIA's core purpose of shedding light on what the government is up to; the magnitude of this public interest is potentially enormous.").

III. Prior Opinions balancing public interest in disclosure and individual privacy

This Office has previously opined on balancing individual privacy rights against the public interest where public funds are disbursed. In this Office's March 18, 1993 opinion we stated the following:

> Where the expenditure of public funds is involved, the courts have balanced the competing interests of the public's right to be apprised of how public funds are spent against possible personal privacy interests, the balance being tilted in favor of disclosure. In Perkins v. University of South Carolina, 86–CP–40–3405, in an order dated October 27, 1986, the court observed that
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> > the public policy in favor of the disclosure of financial information is not to be thwarted because of a claim that disclosure would unreasonably invade personal privacy.
> >
> > ....
> >
> > The purpose of the FOIA is to promote disclosure of information of a public nature, and the expenditure of tax dollars is certainly of a public nature. Furthermore, in order to promote the policies underlying the FOIA, the exceptions to the general mandate of disclosure should be construed narrowly....

Op. S.C. Atty. Gen., No. 93-17, 1993 WL 720090 (March 18, 1993). Similarly, in this Office's May 18, 2005 opinion, we noted:

> Although a presumption of disclosure exists, we note also that the courts have been hesitant to uphold disclosure when it would invite an unwarranted invasion of personal privacy.... [where] disclosure would not reveal any information about the workings of the [agency].
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> ...
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> In analyzing the [personal privacy] issue, the courts have also focused upon the issue of whether disclosure of the names would assist the public in analyzing the actions of the agency. In this case, the author of your enclosed letter noted that the sole purpose for providing the names was to prevent fraudulent "duplication." In Washington Post, the Court explained that disclosure served to shed light on "the workings of the Department of Agriculture and the administration of this massive subsidiary program." 943 F.Supp. at 36. Likewise, it appears that disclosure of recipient names in this case would also serve an important public interest. As indicated, the purpose for collecting the names is to

> prevent fraudulent "duplication." Disclosure would provide valuable information as to who receives funds and how those funds are distributed.

Op. S.C. Atty. Gen., 2005 WL 1383358 (May 18, 2005). Again, in this Office's December 5, 2011, we opined:

> The weight afforded to the "public interest in disclosure" looks to the extent to which disclosure serves the FOIA's purpose of "contribut[ing] significantly to public understanding of the operations or activities of the government."
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> ...
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> [W]e believe the public has a significant interest in learning the extent to which the CDD has complied with its statutory purpose and properly disbursed extensive amounts of public funds.
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> ...
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> News-Press indicates privacy claims from those who accept a public benefit...may be disfavored under the law.

Op. S.C. Atty. Gen., 2011 WL 6959371 (December 5, 2011).

These opinions consistently found that there is a significant public interest where the information sought by a FOIA request would reveal information relevant to a public body's inner workings and compliance with statutory mandates. As described above, by statute, the General Assembly charged the Department with determining grant eligibility, established clear parameters for award amounts and enforcement mechanisms for fraudulent applications, as well as mandating reduction of awards on a proportional basis where awards exceed allocated funds. S.C. Code Ann. § 46-1-160. The information provided by the grant applicants is used by the Department in fulfilling these statutory duties. Therefore, it is this Office's opinion that a court would likely find a substantial public interest in disclosure which allows a "look at the information the agency had before it when making these determinations so that the public can monitor whether the agency is correctly doing its job." Multi Ag Media LLC, 515 F.3d at 1231; Burton, 358 S.C. at 352.

Further, where disclosure does reveal the workings of public bodies, the opinions state that the balance is often tilted in favor of disclosure when measured against the privacy claims of individuals who receives public funds. In contrast, the individual privacy interest has been held to outweigh the public interest where the information sought by a FOIA request would not further reveal information about the duties or performance of a public body.[6] Based on the opinion request's admission that the information

[6] Glassmeyer, 414 S.C. at 223 ("We fail to see how disclosure of the limited information the City seeks to protect would serve to establish the veracity of the applicants more than the information already provided... In balancing the interests of protecting personal information against the public's need to know the information, we find no

sought was "essential" to the determination of an applicant's eligibility to receive funds under the grant program, it is this Office's opinion that a court would likely find a FOIA request for the information which the Department seeks to withhold would reveal information relevant to the public body's inner workings.

Again, only a court can decide whether the information which the Department seeks to protect is subject to disclosure under the FOIA. In light of our State FOIA's mandate of liberal construction in favor of disclosure, this Office has consistently advised public bodies concerning FOIA requests that, "when in doubt, disclose..." Op. S.C. Atty. Gen., 2015 WL 4699336 (July 27, 2015).[7] We have also advised that "where records show the manner of expenditure of public monies, there is no applicable exception in the law, nor, in our view, any valid basis for why those expenditures should not be disclosed." Op. S.C. Atty. Gen., 2011 WL 6959371 (December 5, 2011).

Finally, this Office has encouraged public bodies to utilize a waiver form where individuals' private information may become subject to public disclosure as part of a FOIA request. Op. S.C. Atty. Gen., 2005 WL 1383358 (May 18, 2005). The Department did, in fact, include such a waiver within the grant application packet. This Office has stated that such a waiver "would eliminate any dispute regarding the existence of such [a] privacy right." Id. Based on the considerations discussed above, it is this Office's opinion that a court would likely find the information the Department seeks to protect from disclosure would not fall under the privacy exemption, S.C. Code Ann. § 30-4-40(a)(2), and would likely compel disclosure in response to a FOIA request.

Conclusion

We hope that the guidance provided above will assist you and the Department of Agriculture in determining your response to future FOIA requests. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). Moreover, as we have discussed, even if a particular exemption of FOIA is applicable, the Department possesses the discretion to release the information in question, notwithstanding the applicability of any exemption. Thus, in the final analysis, even though we may advise you as to the law, it is up to the Department to determine disclosure in a given instance. If it is later determined otherwise, or if you have any further questions or issues, please let us know.

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evidence in the record demonstrates disclosure would further the FOIA's purpose of protecting the public from secret government activity.").

[7] Campbell, 354 S.C. at 287 ([T]he South Carolina Attorney General's 1998 "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," states the FOIA must be construed "liberally to carry out its intent that citizens obtain public information at the least cost, inconvenience, or delay. Consistent with this mandate, my Office has adopted the following guiding principles in opinions construing the FOIA: When in doubt, disclose....").

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General