

1976 WL 30485 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 6, 1976

***1 RE: Drug Diversion Program**

D. H. Boyne, Jr.
Director
Beaufort County Alcohol Safety Action Program
Coleman Hall, Ribaut Road
P. O. Box 311
Beaufort, South Carolina 29902

Dear Mr. Boyne:

Your request for information concerning the Beaufort County Drug Diversion Program has been forwarded to me for reply.

With reference to what records can be retained by the local law enforcement agencies when a client is referred through pre-trial intervention into the Drug Diversion Program, it seems that it would be possible to retain some form of record which would reflect the arrest of the client. Although there is no specific statutory authority in South Carolina allowing the law enforcement agency to retain such record, in absence of a clear prohibition of retaining such records it would be permissible. It should be noted, however, that if such records were in fact retained, they may be subject to expungement under Section 17-4 of the 1962 Code of Laws of South Carolina (as amended) if the person fits within the framework of this statute.

As to whether a law enforcement agency can maintain a non-public file on Drug Diversion clients, it appears that they could retain such a file. Although this is not specifically provided by statute as in the case of Section 32-1510.57 of the 1962 Code of Laws of South Carolina (as amended), under Section 1-20.1 of the Code, commonly entitled The Freedom of Information Act, it states that public records for the purposes of the Act shall not include ' . . . those records concerning which it is shown that the public interest is best served by not disclosing them to the public . . . ' Under the implementation of the Drug Diversion Program, it seems to be of great importance and in the public interest to provide for the non-disclosure of certain records.

Furthermore, it would not be in violation of the federal confidentiality regulations to maintain such a non-public file in that these guidelines do not come into effect until the client actually enters the program. Therefore, any records prior to this point in time could be maintained non-public without regards to the federal regulations if it complies with the above-mentioned portion of the State Freedom of Information Act.

The non-public file could be maintained indefinitely without denoting a final case disposition in absence of expungement. The purpose of maintaining such a file or records for an indefinite period of time is to prevent a person from entering the program a second time but as a first offender. Although there may be occasions where it would be beneficial for a client to enter the program more than once, it would seem to defeat the purpose of such a program to allow a client to enter a second time as though it were his or her first time. This would justify the retainage of the records for a long period of time to be fully knowledgeable of those entering the program.

It should be pointed out, however, that these non-public records may be subject to expungement under Section 17-4 of the Code. If in fact there is an order of expungement obtained, then these records could not be retained indefinitely as they are not exempt from expungement by statute as in the case of SLED records under Section 32-1510.57.

*2 I hope this information will be of some assistance to you in implementation of your Program in Beaufort County. If this Office can be of any further assistance, please do not hesitate to contact us.

Sincerely yours,

H. Michael Bowers
Staff Attorney

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