



ALAN WILSON  
ATTORNEY GENERAL

May 31, 2024

Director Lewis J. Swindler, Jr.  
South Carolina Criminal Justice Academy  
5400 Broad River Road  
Columbia, SC 29212

Dear Director Swindler:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

I am writing to request an opinion regarding an interpretation of the interplay between SC Code Section 30-4-30(D)(4), SC Code Section 23-23-150(M), and SC Code Section 23-1-240(G)(1).

South Carolina Code Section 30-4-30(D)(4): "The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person: all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period."

South Carolina Code Section 23-23-150(M) states: "If an officer with an allegation of misconduct is found not guilty or not at-fault, the records of the misconduct allegation must be expunged by the council within thirty days."

South Carolina Code Section 23-1-240(G)(1) states: "Data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act."

The South Carolina Criminal Justice Academy ("CJA") has received a request pursuant to SC Code Section 30-4-30(D)(4) for all documents provided to the

South Carolina Law Enforcement Training Council (“LETC”) for the members to render final agency decisions.

Three questions arise from this request. First, whether a video recording or audio recording meet the definition of “documents?” Second, whether body worn camera video becomes a public record because it is submitted to LETC for its review? Third, if an officer is found not to have committed certification misconduct, is CJA required to produce the documents submitted to LETC to be reviewed prior to expungement?

### Law/Analysis

In response to your first question, this Office suggests conferring with the requestor regarding the scope of the public records sought. The Freedom of Information Act (“FOIA”) states, “A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access.” S.C. Code § 30-4-30(A)(1) (emphasis added). “Public record” is a statutorily defined term which “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.” S.C. Code § 30-4-20(C) (emphasis added). This Office has opined that the term is certainly broad enough to include video or audio recordings. See Op. S.C. Att’y Gen., 2017 WL 1368244 (April 5, 2017) (“It is this Office's opinion that a court would likely find an audio tape recording of a school district meeting by an employee of the district to be a public record of a public body subject to disclosure under the South Carolina Freedom of Information Act.”). To the extent that a video recording or audio recording is responsive to a request for public records, they can and should be produced unless they are closed by law or allowed to be exempted from disclosure. See S.C. Code § 30-4-40 (Matters exempt from disclosure).

Your second question asks, “whether body worn camera video becomes a public record because it is submitted to LETC for its review?” It is this Office’s opinion that “data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act.” S.C. Code § 23-1-240(G)(1). The General Assembly clearly expressed its intent that data recorded by a body-worn camera is not disclosable under the FOIA without regard to which public body may have possession of it. See State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015) (“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.”). If such data is not a public record, S.C. Code § 30-4-30(A)(1) does not require a public body to produce it. While this data is not subject to disclosure under the FOIA, it may be released to certain persons listed in S.C. Code § 23-1-240(G)(5), or

“A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body-worn camera in its discretion.” S.C. Code § 23-1-240(G)(3) (emphasis added).

Your third question asks, “if an officer is found not to have committed certification misconduct, is CJA required to produce the documents submitted to LETC to be reviewed prior to expungement.” It is this Office’s opinion that the FOIA does not require the disclosure of an allegation of misconduct where the LETC finds an officer not guilty or not at-fault. This Office issued an opinion to you dated December 6, 2018, which concluded that this information is not subject to disclosure under the FOIA.

[T]he General Assembly recently passed 2018 Act No. 215 which established a framework for the adjudication of allegations of misconduct of a law enforcement officer and for conducting a contested case hearing, if one is requested. S.C. Code Ann. § 23-23-150. Section 23-23-150(L) clearly exempts the allegations of misconduct and information which must be reported to the Academy regarding the use of excessive force from disclosure as follows:

In addition to the allegations of misconduct specified in this section, any finding by a law enforcement agency as to the use of excessive force by a law enforcement officer must be reported to the academy by the appropriate law enforcement agency or department within thirty days of the finding, the information of which must be maintained by the academy for investigative and personnel hiring purposes. This information is not a public document and not subject to disclosure other than to a law enforcement or prosecution agency, or attorneys representing a law enforcement or prosecution agency, except by court order. This exemption does not preclude the disclosure of any information contained in these records from another source or by another provision of law.

S.C. Code Ann. § 23-23-150(L) (emphasis added). It is this Office’s opinion that a court would find the language “not a public document and not subject to disclosure” clearly and unambiguously demonstrates legislative intent to exempt such documents from disclosure under the S.C. FOIA. While it is this Office’s opinion that Section 23-23-150(L) provides an exemption from the S.C. FOIA’s disclosure requirements, a court would likely construe this exemption narrowly to apply only to the specific information described therein. Burton, supra. Thus, a court would likely find that only the allegations of misconduct and findings of a

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law enforcement agency as to the use of excessive force by an officer which are reported to and maintained by the Academy are exempted from disclosure.

Op. S.C. Att'y Gen., 2018 WL 6587190, at 7-8 (December 6, 2018). Your letter quotes S.C. Code § 23-23-150(M) to say those records “must be expunged by the council within thirty days.” Regardless of whether expungement occurs prior to the CJA receiving a public records request, it remains this Office’s opinion that CJA is not required to disclose allegations of misconduct and findings of a law enforcement agency as to the use of excessive force under the FOIA. See Op. S.C. Att'y Gen., 2017 WL 5203263 (October 31, 2017) (“This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law.”).

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General