



ALAN WILSON
ATTORNEY GENERAL

May 25, 2023

Daniel Gourley, Esq.
General Counsel
Beaufort County Sheriff's Office
Post Office Box 1758
Beaufort, South Carolina 29901

Dear Mr. Gourley:

We received your letter requesting an opinion of this Office concerning the Beaufort County Sheriff's Office's (the "Sheriff's Office's") ability to obtain data collected by the emergency medical services department (the "Department"). Specifically, you ask whether a search warrant is "properly classified as a 'court order' allowing for the release of the data collected and prepared by emergency medical services as contemplated in S.C. Code [section] 44-61-160(A)"? Alternatively, you ask if a search warrant does not authorize the release of the collected data by the Department, would section 44-61-160(G) allow the solicitor to request and obtain the data collected from the Department and the Department could "then release the data to the Solicitor and in turn, the Solicitor could release the data to the Sheriff's Office to use in their criminal investigation."

Law/Analysis

The Emergency Medical Services Act of South Carolina (the "Act") is found in article 1 of chapter 61 of title 44 of the South Carolina Code (2018 & Supp. 2022). The Act governs the provision of emergency medical services in this State including licensing and permitting requirements for those providing emergency medical services. Section 44-61-90 of the South Carolina Code (2018) requires licensees to "maintain records that include approved patient care report forms, employee or member rosters or both, and training records." However, as you mentioned in your letter, section 44-61-160 of the South Carolina Code (2018 & Supp. 2022) requires certain data to be treated as confidential. Section 44-61-160(A) of the South Carolina Code (Supp. 2022) provides:

The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information and data collected or prepared by emergency medical services must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act. However, the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to subpoena in any administrative, civil, or criminal proceeding and may be released by court order. An individual in attendance at a proceeding must not be required to testify as to the identity of a patient except

pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient upon his request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request.

Initially, it is important to note that section 44-61-160 only protects the identities of the patients and emergency medical technicians who are mentioned or referenced in the information or data collected in connection with providing emergency medical services. This was not always the case. Prior versions of section 44-61-160 protected the data itself. 2004 S.C. Acts 271; Op. Att'y Gen., 2009 WL 2844876 (S.C.A.G. Aug. 19, 2009) (finding section 44-61-160(a) "protects all data, including response times, trip numbers, requests for helicopter transport by numbers and dates and other general raw data compiled from day to day operations of our Emergency Services Department."). In 2010, the Legislature amended section 44-61-160 deleting reference to the confidentiality of "emergency and critical care medical services mentioned, referenced, or otherwise appearing in information and data collected or prepared by or in connection with emergency medical services . . ." 2010 S.C. Acts 157. Therefore, protection for only the identities of the patients and emergency medical technicians remains.

According to section 44-61-160(A), information pertaining to patients' and emergency medical technicians' identities is "not available to the public under the Freedom of Information Act." However, in a 2017 amendment, the Legislature, which previously stated such information was also not subject to subpoena, specified "the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to subpoena in any administrative, civil, or criminal proceeding and may be released by court order." 2017 S.C. Acts 47. Thus, you ask us whether a search warrant constitutes a "court order" for purposes of section 44-61-160(A) allowing the release of otherwise confidential information.

Neither section 44-61-160, nor any other provision in the Act, defines what is included as a "court order." To our knowledge, our courts have not addressed whether a search warrant is a court order for purposes of section 44-61-160. Therefore, we employ the rules of statutory interpretation to determine whether a search warrant is a court order.

"The cardinal rule of statutory construction is to ascertain and effectuate legislative intent." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). As such, a court must abide by the plain meaning of the words of a

statute. Id. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation. Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges, 341 S.C. at 85, 533 S.E.2d at 581. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed.1992)).

State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622-23 (2011).

By its plain and ordinary meaning, a “court order” is an order issued by a court. Section 17-13-140 of the South Carolina Code (2014) governs the issuance of search warrants in South Carolina. This provision requires that search warrants be issued by a magistrate, recorder, city judge having the powers of a magistrate, or a judge of any state court of record. Id. Accordingly, a search warrant is an order issued by a court. Moreover, search warrants are generally recognized as a type of court order. See 79 C.J.S. Searches § 182 (“A search warrant is a court order authorizing law enforcement officers to conduct a search and is a legal process.”); State v. Jade G., 137 N.M. 128, 133, 108 P.3d 534, 539 (2004), *aff’d in part, rev’d in part*, 141 N.M. 284, 154 P.3d 659 (2007) (“We agree with the State that a search warrant issued by a court is a form of a court order.”). As such, we believe a search warrant would be considered a court order and thus, may allow for the release of information deemed confidential under section 44-61-160(A).

Although we believe a court would find a search warrant to be a court order allowing the disclosure of otherwise confidential information under section 44-61-160(A), section 44-61-160(G) specifically provides:

The department, or a person or entity licensed or certified under this section is required to disclose to the solicitor or his designee information received that could aid in the investigation or prosecution of criminal activity. This includes, but is not limited to, information concerning child abuse, felony driving under the influence, assaults, or other crimes regardless of whether the information is obtained before, during, or after treatment. All information received by the solicitor shall be held confidential by the solicitor or his designee unless such information is necessary for criminal investigation and prosecution.

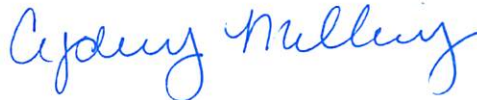
While this provision only requires disclosure to a solicitor, it also gives the solicitor authority to share otherwise confidential information for purposes of a criminal investigation. Therefore, we believe the solicitor could share the confidential information obtained from the Department with law enforcement for the purpose of conducting a criminal investigation.

Daniel Gourley, Esq.
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Conclusion

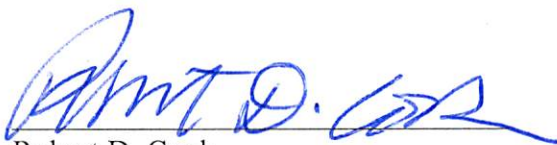
Section 44-61-160 of the South Carolina Code protects the identities of patients and emergency medical technicians contained in data collected as a result of providing emergency medical services. This provision requires such information to be kept confidential and exempts it from disclosure under the Freedom of Information Act. However, section 44-61-160(A) allows for the release of such information by court order. Because we find search warrants are a type of court order, we believe a search warrant would allow for the release of otherwise confidential information under section 44-61-160. In addition, section 44-61-160(G) requires the disclosure of otherwise confidential information to a solicitor or his designee if such information could aid in the investigation or prosecution or criminal activity. While the solicitor must maintain the confidentiality of such information, section 44-61-160(G) allows the solicitor to disclose it, presumably to law enforcement, if necessary for a criminal investigation or prosecution.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General