



ALAN WILSON
ATTORNEY GENERAL

March 23, 2026

The Honorable Mike Burns
South Carolina House of Representatives
1105 Pendleton Street
326-D Blatt Building
Columbia, SC 29201

Dear Representative Burns:

You seek our opinion as to “whether a subdivision of the state specifically, a special purpose district (SPD), is permitted to withhold a list of customers for whom SPD provides service.”

By way of background, you provide the following information:

[t]he SPD has a geographic territory under state law. In this case, however, SPD also offers those same services outside of their geographically assigned territory to commercial customers in competition with other non-governmental providers of the same service.

A Freedom of Information request sought a list of all customers outside of its geographic territory. The SPD responded that the information was protected as a “trade secret” under SC Code Section ... 30-4-40(a)(1).

I further believe that SPD is incorrect in their reading of this section as protecting their list of customers as a so-called “trade secret.”

Law/Analysis

In Op. S.C. Atty Gen., 2012 WL 3875118 (August 28, 2012), we summarized the purpose and intent of South Carolina’s Freedom of Information Act (FOIA) as follows:

[p]rior to addressing the merits of your particular request, it is important to emphasize that South Carolina’s Freedom of Information Act (“FOIA”) was adopted in its present form in 1978 S.C. Acts No. 593. A number of amendments have been made to FOIA over the years. [See, e.g. 2017 Act No. 67]. The Act’s preamble best expresses both the Legislature’s intent in enacting the statute, as well as the public policy underlying it. The preamble to FOIA, set forth in S.C. Code Ann. § 30-4-15 provides as follows:

[t]he 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 fully report the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

On numerous occasions in construing FOIA, we have emphasized the Legislature's expression of openness in government, as articulated in § 30-4-15. In an opinion of this office, dated April 11, 1988, for example, we summarized the rules of statutory construction which this office follows in interpreting FOIA as follows:

[a]s with any statute, the primary objective in construing the provisions of the Freedom of Information Act is to give effect to the Legislature's intent. Banker's Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E. 2d 424 (1980). South Carolina's Freedom of Information Act was designed to guarantee to the public reasonable access to certain information concerning activities of the government. Martin v. Ellisor, 266 S.C. 377, 213 S.E. 2d 732 (1975). The Act is a statute remedial in nature and must be liberally construed to carry out the purpose mandated by the General Assembly. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E. 2d 563 (1978). Any exception to the Act's applicability must be narrowly construed. News and Observer Publishing Co. v. Interim Bd. For Wake Co., 29 N.C. App. 37, 223 S.E. 2d 580 (1976).

See also Evening Post Publishing Co. v. City of North Charleston, 363 S.C. 452, 611 S.E. 2d 496 (2005) [FOIA exemptions are to be narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government.]; South Carolina Tax Commission v. Gaston Copper Recycling Corp., 316 S.C. 163, 447 S.E. 2d 843, 846 (1994) ["The purpose of the FOIA is to protect the public from secret government activity"]; Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E. 2d 863, 864-65 (2001) ["FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the Legislature"].

The decision of Campbell v. Marion Co. Hospital District 354 S.C. 274, 281, 580 S.E. 2d 163, 166 (Ct. App. 2003), is instructive with respect to your question. In Campbell, our Court of Appeals emphasized that:

.... 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.

Moreover, the Campbell case involved interpretation of the “trade secrets” exemption contained in §30-40 (a)(1) of FOIA. In Campbell, Marion County Hospital argued that information relating to physician’s salaries, compensation and the purchase price of physician practices “amounted to “trade secrets” thereby necessitating protection from disclosure.” According to Marion County, “as a rural county hospital, [the County] needed to keep the information private in order to attract qualified physicians and to compete with wealthier urban areas.” 254 S.C. at 281, 580 S.E. 2d at 167.

However, the Court of Appeals rejected this argument. The Court referenced the definition of “trade secrets,” contained in §30-4-40(a)(1) of FOIA. Such provision states:

Trade secrets, which are defined as unpatented, secret, commercially valuable plans appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential; and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, and evaluations and other materials which contain messages to potential customers, competitive information, or evaluation.

The Campbell Court evaluated this definition, as well as the legislative purpose, as follows:

[t]he statute specifically defines “trade secrets” for public bodies, such as the Hospital, that market services. “Trade secrets” include “feasibility, planning, and marketing studies, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.” S.C. Code Ann. § 30-4-40(a)(1) (1991 & Supp. 2002). It is evident from reading the entire “trade secret” section that the Legislative intended the “trade secret” exemption to protect an organization’s studies or preparations in its quest to produce or sell its product or service to “potential customers,” not its internal quest to obtain employees compensation and salary information regarding physicians and the purchase price of physician practices indubitably do not meet this unambiguous definition.

Concomitantly, the circuit court erred in finding the information constituted “trade secrets” that mandated protection.

354 S.C. at 286, 580 S.E. 2d at 169.

Case law in other jurisdictions generally supports disclosure of customer lists as not constituting a trade secret where FOIA is concerned. Much like our Court of Appeals in Campbell, courts elsewhere view FOIA as not requiring a technical definition of a “trade secret,” but one more liberal in nature, consistent with the legislative intent requiring disclosure.

For example, in Pub. Citizen Health Research Group v. FDA, 704 F. 2d 1280, 1288-89 (D.C. Cir. 1983), the court rejected the Restatement’s definition of “trade secrets” in favor of a more narrower definition, consistent with the disclosure requirements of FOIA. In the words of the court,

[i]n our opinion, the term “trade secrets” in Exemption 4 of the FOIA should be defined in its narrower common law sense, which incorporates a direct relationship between the information at issue and the productive process. Accordingly, we define trade secret solely for the purpose of FOIA Exemption 4, as a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding, or processing of trade commodities, and that can be said to be the end product of either innovation or substantial effort.

According to the Court, “[a] number of courts had adopted a more restrictive definition of trade secrets prior to the adoption of the FOIA. Under the restrictive definite, trade secret status is reserved for information involving “the productive process itself, as opposed to collateral matters of business confidentiality such as pricing and sales volume data, sources of supply and customer lists.” Id. at 1286-87.

A reading of the definition of “trade secrets” contained in South Carolina’s FOIA is consistent with the approach taken in Pub. Citizen Health Research Group and other decisions. As our Court of Appeals emphasized in Campbell, “[i]t is evident from reading the entire ‘trade secret’ section that the legislature intended the ‘trade secret’ exemption to protect an organization’s studies or preparations in its quest to produce or sell its product to ‘potential customers....’” 354 S.C. at 286, 580 S.E. 2d at 169.

In short a “customer list” is not a study or preparation of prospective clients, but an actual list of present customers.

Conclusion

For decades, we have interpreted FOIA and its provisions, employing the tenet “when in doubt, disclose.” We read exceptions to disclosure narrowly. Thus, in our view, such an

The Honorable Mike Burns
Page 5
March 23, 2026

interpretation of FOIA requires the conclusion that a “customer list” is not a “trade secret” pursuant to § 30-4-40(a)(1) of FOIA. Neither the express language, nor the legislative intent, compels this construction, particularly in light of the fact public funds are most likely involved. Accordingly, it is our opinion that a court would likely conclude that a customer list is not entitled to an exemption under FOIA as a trade secret.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Cook", written in a cursive style.

Robert D. Cook
Solicitor General Emeritus