ALAN WILSON
ATTORNEY GENERAL

March 29, 2011

David S. Goble, Director
South Carolina State Library
P.O. Box 11469
Columbia, SC 29211

Dear Mr. Goble:

In a letter to this office, you request an opinion concerning information requests from individuals who are incarcerated by the South Carolina Department of Corrections (SCDC). By way of background, you provided us with the following information:

> The South Carolina State Library provides services to state agencies, state employees, libraries throughout the state, and to all citizens. Occasionally we receive requests for information from individuals who are incarcerated by [SCDC]. Frequently these requests are for publically available information - addresses and phone numbers. Although we are not specifically directed by law to respond to such requests by inmates, our responsibilities include planning and coordinating services to groups with special needs (Section 60-1-80 e) and providing services to the public (Section 60-1-100). It has been our practice to serve the inmates of South Carolina based on this legislation and our professional code of ethics which does not allow us to deny services.

As provided in the request letter, the SCDC has informed you it has discovered that inmates are obtaining home addresses and other personal information of SCDC employees by writing to the State Library. The SCDC cited to recently intercepted mail from the State Library providing an inmate with the home address of the Director, and an attempt was made to obtain the address of a SCDC employee who was nearly killed in an earlier attack at his home that was allegedly arranged by another inmate. The SCDC states that, although it "has screening measures in place to identify the kinds of information that might lead to the improper use of information by inmates[,] . . . it appears that the 'screening process puts an additional burden on . . . already overburdened staff.'" The SCDC has requested, therefore, that the State Library reconsider the policy of providing information to inmates.

Specifically, you ask this office whether the State Library has "the legal right to refuse information requests initiated by incarcerated citizens," or "does the legal right to restrict information requests from inmates reside with the [SCDC]?"

Law/Analysis

S.C. Code Ann §60-1-40 (2009) sets forth the powers of the South Carolina State Library Board, which include providing State government library services and the making of such rules and regulations required to accomplish this purpose. Section 60-1-50 states:

> The director of the South Carolina State Library is responsible for the management of the State Library and for the development and coordination of a statewide program of library and information services. The director shall:
>
> (h) encourage every citizen of the State to fully utilize the state's library resources and maintain the individual's right of access to those resources.

Section 60-1-60 provides:

> The South Carolina State Library is charged with the development and extension of library services throughout the State. The State Library is responsible for executing the library policy for the State and shall:
>
> (d) provide for the citizens of the State specialized library services and materials not generally appropriate, economical, or available in other libraries of the State . . .

Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Section 60-1-100 provides in part that "[t]he services and resources of the South Carolina State Library and any public library receiving state and federal funds administered by the State Library are free for use by all persons living within South Carolina or the county or region served . . ."

We also advised in a prior opinion on February 17, 2009, that §60-1-40(e) authorizes the State Library Board to ". . . promulgate regulations necessary for carrying out the provisions of this chapter." Pursuant to §60-1-50(b), the director of the State Library is authorized to "recommend to the State Library Board policies and regulations necessary for carrying out the provisions of this chapter and

execute those adopted by the board." Section 60-1-100 states in part "[t]he use of a library is subject to regulations adopted by the library's board. . . ."

Specifically regarding inmate requests for the addresses of SCDC employees, we have previously emphasized pursuant to §§30-4-10, et seq. (2007)[the South Carolina Freedom of Information Act] that the balance between the competing interests of disclosure and the protection of personal privacy - weighing the individual's right to protection of privacy against the public's disclosure of government information. Ops. S.C. Atty. Gen., September 26, 2002; September 30, 1993.

Typically, over the years, this Office has concluded that a person's home address is public information because such information is readily available through other sources such as the telephone book or City Directory. In an opinion dated July 16, 1987, for example, we stated that the release of home addresses would generally not constitute an unreasonable invasion of personal privacy inasmuch as "[r]esidence addresses and telephone numbers have been deemed disclosable since the same are often ascertainable by reference to many publicly attainable books and records." Ops. Atty. Gen., October 2, 2000 [customer home addresses for Seneca Light and Water Company]; September 30, 1993 [mailing list for the Department of Agriculture publication]; see Michigan State Employees Assn. v. Dept. of Management and Budget, 135 Mich. App. 248, 353 N.W.2d 496 (1984); Hechler v. Casey, 175 W.Va. 434, 333 S.E.2d 799 (1985).

We have advised, however, that caution must be exercised in disclosing residence addresses and telephone numbers, as §30-4-40(a)(2) exempts from disclosure "information of a personal nature where the disclosure thereof would constitute unreasonable invasion of personal privacy. . . ." Op. S.C. Atty. Gen., July 16, 1987. We note that Article I, §10 of the South Carolina Constitution expressly protects against "unreasonable invasions of privacy." In an opinion dated October 2, 2000, we cautioned that "if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, a determination as to disclosure must be made on a case-by-case basis. . . ." This remains the opinion of this office. In common parlance, the term "unlisted" clearly implies the individual in question has requested the number and/or address not be given out through directory services. This factor weighs heavily regarding the heightened privacy interest of that individual in the non-disclosure of the unlisted number or address.[1]

Regarding your second question, it is clear that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S. 78, 84 (1987); see also State v. Ellefson, 266 S.C. 494, 224 S.E.2d 666, 669 (1976)[recognizing that "even a convicted prisoner does not shed basic constitutional rights at the prison gate. Rather, he 'retains all the rights of an

[1]The Legislature has recognized the need to protect individuals' privacy pursuant to §§30-2-10 et seq. (2007) [the Family Privacy Protection Act of 2002], which deems as personal information an individual's home address which is sought for consumer solicitation. In addition, §§30-2-300 through 340 (Supp. 2010) severely limit the disclosure of individuals' Social Security numbers.

ordinary citizen except those expressly, or by necessary implication, taken from him by law.'" However, "[r]ecognition of some measure of constitutional protection, however, 'in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which [inmates] have been lawfully committed.'" Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Because maintaining prison safety and internal security are primary functions of prison administration, withdrawal or limitation of many privileges and rights may be justified. Sandin v. Conner, 515 U.S. 472, 485 (1995)[citing Jones v. North Carolina Prisoners' Union, 433 U.S. 119, 125 (1977), and quoting Price v. Johnston, 334 U.S. 266, 285 (1948)]; see also Shaw v. Murphy, 532 U.S. 223, 229 (2001) [recognizing "the constitutional rights that prisoners possess are more limited in score than the constitutional rights held by individuals in society at large"].

An inmate enjoys a First Amendment right to receive and send mail, Thornburgh v. Abbott, 490 U.S. 401 (1989), but prison officials may adopt regulations that impinge on an inmates's constitutional rights if those regulations are "reasonably related to legitimate penological interests." Id., 490 U.S. at 413; Turner, 482 U.S. at 89; Bell v. Wolfish, 441 U.S. 520, 544-52 (1979); Pell v. Procunier, 417 U.S. 817, 822 (1974). Legitimate penological interests include preserving prison security and maintaining order and discipline. Moreover, in noting the delicate nature of prison management, the United States Supreme Court has "afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world." Thornburgh, 490 U.S. at 408. Prison officials thus have more leeway to regulate mail because of the greater security risks inherent in materials coming into a prison. Id., 490 U.S. at 413, Turner, 482 U.S. at 89. The Turner Court explained as follows:

> When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. In our view, such a standard is necessary if "prison administrators ..., and not the courts, [are] to make the difficult judgments concerning institutional operations." [Jones, 433 U.S. at 128]. Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration." [Martinez, 416 U.S. at 407].

Turner, 482 U.S. at 89.

Concerning incoming/outgoing inmate mail, the SCDC has established a policy regarding "Inmate Correspondence Privileges." The SCDC policy provides that all incoming/outgoing general and

certified correspondence will be opened and inspected by SCDC mailroom staff. The "POLICY STATEMENT" specifically states : "[the SCDC] recognizes the importance of an inmate's desire to correspond with family members, attorneys, and others. To fill this end, the SCDC will not place a limit on the quantity of mail an inmate may send . . . or receive or the length, language, content, or source of mail except where there is reasonable belief that the limitation is necessary to protect public safety, institutional order, or security. . . . [Emphasis added]. Among other "questionable correspondence," the SCDC policy specifically directs the withholding of incoming/outgoing mail that encourages or instructs "in the commission of criminal activity." If inmates were permitted to have unfettered access to their general correspondence, it would "threaten the core functions of prison administration, maintaining safety and internal security." Turner, 482 U.S. at 92. Plots to escape, blackmail, contraband, threats, illegal activities, for example, could be conducted without any warning, leaving inmates and prison staff vulnerable to attack. Accordingly, the First Amendment rights of inmates "can be exercised only at the cost of significantly less liberty and safety for everyone else, guards and other prisoners alike." Id. Thus, the potential ripple effect that unchecked mail would present outweighs the priority of inmates' First Amendment rights. Id. at 90. The SCDC policy sets forth reasonable safety and security parameters within which inmates' correspondence may be managed effectively.

Decisions in other jurisdictions considering facts similar to those you present to us support this conclusion. In DiRose v. McClennan, 26 F.Supp.2d 550 (W.D. N.Y. 1998), the federal district court determined that prison officials' decision to confiscate a letter to an inmate which contained a Department of Motor Vehicles Driving Abstract record of a corrections officer was a legitimate penological interest for keeping the addresses of corrections officers from inmates to avoid possible intimidation. In Sikorski v. Whorton, 631 F.Supp.2d 1327 (D. Nev. 2009), the federal district court upheld a State prison's policy of not allowing inmates to receive names and addresses of private citizens without the express, informed consent of the citizens did not violate First Amendment rights of an inmate who was issued an "unauthorized mail notification" relating to the citizens' petition for recommendations regarding parole and sentencing procedures, which was forwarded to the inmate by a third-party. The court concluded there was valid, rational connection between the prison's policy and a legitimate governmental interest to protect citizens from potential abuse, harassment, or impropriety by inmates.

Conclusion

It is the opinion of this office that, consistent with the intent of the Legislature, the State Library is required to provide State government library services and respond to requests by SCDC inmates for public information as it would to any other person in South Carolina. We advise, however, that the State Library should take reasonable measures to assure that no person obtains or distributes the unlisted or unpublished address of any employee of the SCDC. We recognize the need for security which mandates personal privacy, and that such a release of private information could very well constitute an unreasonable invasion of personal privacy. The State Library should make any determination to disclose information pursuant to inmate requests on "a case-by-case basis" with these interests in mind. In addition, the SCDC may restrict incoming/outgoing information requests from inmates to the State Library regarding personal information of SCDC employees. Consequently, when SCDC official have a reasonable basis to believe that inmate correspondence contains discussions of criminal activities or that the correspondence is being

used in furtherance of illegal activities, then censorship of inmate correspondence not only is reasonable, but it furthers the substantial governmental interest of preserving institutional security, safety, order, and rehabilitation.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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