



HENRY McMASTER  
ATTORNEY GENERAL

December 23, 2008

The Honorable P. J. Tanner  
Sheriff, Beaufort County  
Post Office Box 1758  
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

You have sought an opinion regarding the Beaufort County Sheriff's Office policy "regarding access to police reports and the Freedom of Information Act." You enclose "a copy of [your] policy along with a synopsis of ... complaints" regarding that policy. By way of background, your letter presents the following questions:

**Q. Was the intent of the fifteen (15) day rule to require law enforcement agencies to adhere to calendar days since they are 24 hour public safety entities and not normal administrative offices?**

Section 30-4-30(a) of the South Carolina Code grants the public the right to inspect public records *in accordance with reasonable rules concerning time and place of access*. Subsection (c) of the same statute addresses responses within fifteen days (*excepting Saturdays, Sundays and legal public holidays*). It is our published policy that records may be reviewed Monday through Friday from 8:00 a.m. to 5:00 p.m. excepting Saturdays, Sundays and legal public holidays. The Island Packet has submitted the argument that as we are a law enforcement agency providing around the clock response services that our administrative offices must remain open and accessible on a twenty-four hour basis.

**Q. When does an Incident Report become a "public record"?**

Our incident reports necessarily go through a vetting process for factual accuracy, proper format classification and indexing as well as grammar and spelling. The report is written by the responding officer. At the end of their 12 hour tour of duty it is submitted to their supervisors for approval. The following morning they are reviewed by investigators for status assignment (active, inactive, closed etc). If it is a business day they are then forwarded to the records section where one section classifies them for NiBrs and UCR. Another section scans them into our archives

system. A third section indexes them before they are filed. It is then and only then that the report is placed into the press box for public review where it is maintained for fifteen (15 days).

As such, Section 30-4-50 (8) states that “incident reports which disclose the nature, substance and location of any crime or alleged crime reports as having been committed” are specifically made public information. This statute, subsection (d) (2) requires that all incident reports be available for “at least the fourteen-day period before the current day ...” We do not disagree with this statute; however the Packet is alleging that we are violating this section by not having our office open and accessible on a twenty-four hour basis. Currently we have a revolving fifteen day file in which the report copies are placed newest to oldest. this file is kept in an office immediately adjacent to the lobby and available upon request to any member of the public or media during our normal administrative business hours Monday through Friday, **excepting Saturdays, Sundays and legal public holidays.**

**Q: What are business hours?**

I have also included as attachments a copy of Beaufort County Council Resolution R-2004-19 in which the council adopted the current personnel and policy handbook. The handbook in Section 3.1.2a (page 21) outlines the recognized holidays which are observed for Beaufort County employees. Also included is page 38 (Section 4 Employee Responsibilities) of the same handbook in which it clearly states in 4.0.1 *Working Hours* that the regular work week begins at 8:00 a.m. on Monday and ends at 5:00 p.m. on Friday.

It is our position that by having the reports available on Monday through Friday (excepting Saturdays, Sundays and legal holidays) that we are in compliance with the law in 30-4-30 (a) and (c) as well as 30-4-50 (A) (8) and (d) (2) in our policy and our practice.

It also appears from informal opinions rendered to Lt. Michael Frank (letter of November 28, 2001) and Mr. R. Allen Young, Esquire (letter of September 24, 1996) that we are consistent with the law by excepting Saturdays, Sundays and legal public holidays as well as our revolving file maintaining incident reports form the previous fifteen days.

**Law / Analysis**

The Freedom of Information Act (FOIA) was adopted in its present form by Act No. 593 , 1978 Acts and Joint Resolutions. A number of amendments have been made to FOIA over the years. 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., Section 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.

(emphasis added).

On numerous occasions, in construing FOIA, we have emphasized the Legislature's expressed policy of openness in government, as articulated in § 30-4-15. For example, in an opinion dated November 6, 2007, we reiterated this emphasis 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. *Bankers' Trust of S.C. 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. *S.C. Dept. 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 & Observer Publishing Co. v. Interim Bd. of Ed. 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.E. 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]; *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001) ["FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature."].

As our courts have stressed, "[t]he essential purpose of the FOIA is to protect the public from secret government activity. South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government." *Campbell v. Marion County Hospital District*, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); *Quality Towing, supra*.

Section 30-4-30, contained in FOIA, provides in relevant part as follows:

- (a) any person has a right to inspect or copy any public record of a public body except as provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

A Sheriff's Office is deemed a "public body" pursuant to FOIA. *See*, § 30-4-20(a); *Burton v. York Co. Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004).

The public's access to law enforcement incident reports is addressed by FOIA. Section 30-4-50 provides that certain categories of records "are specifically made public information subject to the limitations of Sections 30-4-20, 30-4-40 and 30-4-70 of this chapter ...

- (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report."

Moreover, FOIA references how incident reports are to be made available to the public. Section 30-4-30(d)(2) expressly states as follows:

[t]he following records of a public body must be made available for public inspection and copying *during the hours of operation of the public body* without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person: ...

- (2) all reports identified in Section 30-4-50(A) (8) *for at least the fourteen-day period before the current day ...* .

(emphasis added).

Thus, the issue here is what are the "hours of operation" of the Sheriff's Office for purposes of § 30-4-30(d)(2)? In other words, for purposes of FOIA, what is required if a requestor appearing "in person" seeks incident reports from the Sheriff either at night, on the weekend or during a legal holiday? Does FOIA require release of such incident reports on a "24-7" basis or only during normal "office hours" on a "9-5" basis?

In construing § 30-4-30(d)(2), we must interpret FOIA in light of the legislative purpose enunciated in § 30-4-15 - i.e., that the General Assembly requires that FOIA makes "it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost *or delay to the persons seeking access to public documents or meetings.*" (emphasis added).

Authorities in other jurisdictions have construed provisions similar to § 30-4-30 (d) (2) broadly in the context of law enforcement agencies. For example, in *Hangel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991), the Arkansas Supreme Court concluded that the trial court erred in holding that access to police department records was limited to 8:00 a.m. to 4:00 p.m., Monday through Friday, excepting legal holidays. There, the Court found that the Arkansas FOIA was required to be liberally construed and that any exceptions to the Act were to be narrowly interpreted. Thus, the Court rejected the circuit court's conclusion that "the public's access to the records of the Pine Bluff Police Department was limited" to normal business hours. In the Court's view,

[t]he Pine Bluff Police Department operates twenty-four hours a day, seven days a week. When the nature of any agency of the public of necessity operates twenty-four hours a day, it follows in the absence of some showing to the contrary that those are its "regular business hours."

821 S.W.2d at 765.<sup>1</sup>

Likewise, in South Carolina, a Sheriff, as the chief law enforcement officer of the County "is on call 24 hours a day." Moreover, "every law enforcement agency within this state is operational 24 hours a day to meet the public's needs ...." *Op. S.C. Atty. Gen.*, June 30, 1975. Further, neither the Sheriff nor his deputies are controlled by county policies such as hours of operation. Cf. *Rhodes v. Smith*, 273 S.C. 13, 254 S.E.2d 49 (1979); *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988) [deputies are not county "employees" for purposes of county personnel policies and grievance procedure].

It is our understanding that the newspapers in question are not seeking "24-7" access to the information at issue. As we understand, local media simply desires reasonable access to this information at night, on weekends and during holidays. Such lack of access, the newspapers argue, hampers the public's assistance of law enforcement when a major crime occurs during these times because there can be no immediate reporting of the available public information contained in incident reports. We conclude that this is one important reason the General Assembly categorized incident reports as "public information" in § 30-4-50 and thus agree that the newspapers' position is legally correct..

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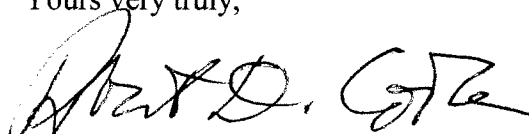
<sup>1</sup> An Ohio case, *State ex rel. The Warren Newspapers, Inc. v. Hutson*, 640 N.E.2d 174 (1994) distinguishes *Hengel* as "broader than Ohio's Act," concluding it to be reasonable to allow access to the "entire department's operations" during "normal administrative hours." 640 N.E.2d at 177-178.

**Conclusion**

Based upon the foregoing, it is our opinion that the General Assembly intended § 30-4-30 (d) of FOIA to require reasonable public access at night, on weekends and during legal holidays to Sheriff's incident reports. A Sheriff's Department functions 24 hours a day and 7 days a week. The Sheriff does not close for holidays. While South Carolina's FOIA does not expressly address "24-7" access to incident reports, the statute does mandate far more than the public being given access to these records only during traditional "9-5" business hours. Access must be given "during the hours of operation of the public body" and, in the case of the Sheriff's Office, that Office operates around the clock. In light of the requirement that FOIA be liberally construed in order to promote citizens' access to information, we thus do not deem it reasonable or consistent with the spirit or intent of FOIA to read § 30-4-30 (d) or FOIA so narrowly as to conclude that the public has no access to incident reports of the Sheriff except during traditional business hours. To the contrary, we interpret FOIA as sufficiently broad to require reasonable public access to Sheriff's incident reports at night, on weekends and during holidays.

This is particularly so in view of the fact that § 30-4-15 - the expression of the Legislature's intent in enacting FOIA - requires "minimum ... delay to the person seeking access to public documents or meetings." Our belief is that access to incident reports only during traditional business hours does not provide for such "minimum .... delay."<sup>2</sup> Thus, FOIA requires reasonable access to such incident reports of the Sheriff at night, on weekends and on holidays.

Yours very truly,



Robert D. Cook  
Deputy Attorney General

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<sup>2</sup> Likewise, we need not address whether FOIA requires "24-7" access. What is sufficient here is that the law requires that there must be *reasonable access* to these records in the Sheriff's Office at night, on weekends, as well as during legal holidays.