



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 22, 1995

Mitzi Grove Ball, Esquire
Attorney for James Island Public
Service District
Post Office Box 858
Charleston, South Carolina 29402

RE: Informal Opinion

Dear Ms. Ball:

You had advised that your client, the James Island Public Service District, has received a request to provide copies of all fire incident reports filed with the James Island Public Service District Fire Department to an individual who has indicated that he will use the information to solicit insurance business. Referencing Op. Att'y Gen. No. 92-20 and language contained in S.C. Code Ann. §30-4-50(B), a portion of the Freedom of Information Act¹, you have raised several questions on behalf of the Public Service District with respect to releasing information when the requestor has advised the District that the information so obtained will be used for commercial solicitation. Each of your questions will be addressed separately following a discussion of the relevant statutes.

Section 30-4-30(a) provides that "[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by §30-4-40, in accordance with reasonable rules concerning time and place of access." As a political subdivision of the State, it is beyond argument that the James Island Public Service District would be a "public body" as that phrase is defined in §30-4-20(a). The definition of "public record"

¹The Freedom of Information Act is codified at S.C. Code Ann. §30-4-10 et seq. (1976 & 1994 Cum. Supp.).

is found at §30-4-20(c), 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. ..." Section 30-4-40 enumerates certain matters which the legislature has deemed to be exempt from disclosure.²

The General Assembly has also declared that certain specific matters are public information, with an initial caveat:

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

....

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

²It is possible that some of the records sought might fall within the exemption of §30-4-40(a)(3), as to

Records of law enforcement and public safety agencies not otherwise available by law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

- (A) Disclose identity of informants not otherwise known;
- (B) The premature release of information to be used in a prospective law enforcement action;
- (C) Disclosing investigatory techniques not otherwise known outside the government;
- (D) By endangering the life, health, or property of any person.

It would be the responsibility of the public body to examine records which might be requested, to determine whether this or any other exemption might be applicable to a given record. The nonexempt records must then be made available in accordance with the Freedom of Information Act. See §30-4-40(b).

....
(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. ... However, this provision must not be interpreted to restrict access by the public and press to information contained in public records. [Emphasis added.]

While §30-4-50(B) specifically refers to a "police incident report," the definition of "police" in this instance appears to be more generic than a reference to a specific type of law enforcement agency; to conclude otherwise would lead to absurd results, since other types of law enforcement agencies also receive incident reports concerning crimes committed or alleged to have been committed.³ The word "police" refers to "maintaining law and order." Severson v. Sueppel, 260 Iowa 1169, 152 N.W.2d 281, 284 (1967). "Police" is also defined as "the function of that branch of administrative machinery of government which is charged with preservation of public order and tranquility, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crime," Police Pension Board of City of Phoenix v. Warren, 97 Ariz. 180, 398 P.2d 892, 895 (1965); or as "policy," "civil organization," "the regulation, discipline and control of a community; civil administration; enforcement of law; public order[,]" "[t]he department of government which is concerned with the maintenance of public order and safety, and the enforcement of the law; the extent of its functions varying greatly in different countries and at different periods," ... "any system of laws and regulations found necessary for preserving the public safety, and to the enforcement of such laws." Norris v. Mayor and City Council of Baltimore, 172 Md. 667, 192 A. 531, 543 (1937). Put another way, "[t]he police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those good manners and good neighborhood which are calculated to prevent a conflict of rights... ." Levine v. State, 110 N.J.L. 467, 166 A. 300, 301 (1933). Thus, the concept of "police" is quite broad and, in terms of incident reports, could well include fire incident reports.

Having examined the language of the statutes relevant to your request, each of your questions will be examined in turn.

³A statute will be construed to avoid an absurd result whenever possible. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Question 1

Does S.C. Code Ann. §30-4-50(B) apply to a request to receive copies of fire incident reports?

Incident reports are specifically declared to be matters of public information except as they, or information contained in them, may be exempt pursuant to §§30-4-20, 30-4-40, or 30-4-70. Assuming that fire incident reports "disclose the nature, substance, and location of any crime or alleged crime reported as having been committed," §30-4-50(A)(8), fire incident reports would fall within that category specifically declared to be public information. As "police incident reports," fire incident reports would thus be subject to the prohibitions of §30-4-50(B), supra, such that information contained therein may not be used for commercial solicitation.

Question 2

If S.C. Code Ann. §30-4-50(B) is applicable to fire incident reports, does S.C. Code Ann. §30-4-50(B) prohibit James Island Public Service District from providing copies of fire incident reports where a determination has been made that such information will be used for commercial solicitation?

As stated in response to your first question, §30-4-50(B) would be applicable to fire incident reports. I am of the opinion that §30-4-50(B) would not prohibit the James Island Public Service District from providing copies of such incident reports even where the requestor has stated that the information contained therein will be used for commercial solicitation, however, since the final sentence of §30-4-50(B) states explicitly: "However, this provision must not be interpreted to restrict access by the public and press to information contained in public records." It would be up to the recipient, and not the public body, to ensure that the Freedom of Information Act would not be violated. James Island Public Service District could and most probably should point out the prohibition contained in the Freedom of Information Act to the requestor as the information or documents are turned over to the requestor; but the statute most probably does not afford a basis to withhold public records.

In so concluding, I am mindful of Op. Att'y Gen. No. 92-20, in which it was stated in the construction of §30-4-50(B), "Of course, the public body to whom such a request is presented would ultimately make the determination as to whether a particular activity would constitute 'commercial solicitation' or to release any records under the Act." To the extent that Op. No. 92-20 is inconsistent with today's opinion, Op. No. 92-20 is

superseded. It is still within the province of the public body to determine what records may appropriately be released under the Act or whether any particular exemptions may be applicable, however.

Question 3

If S.C. Code Ann. §30-4-50(B) does not prohibit James Island Public Service District from providing copies of fire incident reports where a determination has been made that such information will be used for commercial solicitation, does S.C. Code Ann. §30-4-50(B) provide sufficient grounds for withholding copies of fire incident reports under such circumstances?

Due to the last sentence of §30-4-50(B) referred to above and in response to your second question, I am of the opinion that §30-4-50(B) does not provide sufficient grounds for withholding copies of fire incident reports under such circumstances.

Question 4

If James Island Public Service District is required or permitted to provide copies of fire incident reports to an individual where a determination has been made that such information will be used for commercial solicitation, is there an affirmative duty on James Island Public Service District to report the use of this information for commercial solicitation?

The Freedom of Information Act contains no provision for a public body to report the use of such information for commercial solicitation.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing has satisfactorily responded to your inquiries and that you will advise if clarification or additional assistance should be necessary.

Mitzi Grove Ball, Esquire
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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General