

1981 WL 158104 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 7, 1981

***1 Re: The New South Carolina State Gazette Mailing List**

Dr. Charles E. Lee
Director
South Carolina Department of Archives and History
Post Office Box 11669
Columbia, South Carolina 29211

Dear Dr. Lee:

This will acknowledge receipt of your letter of December 30, 1980, which the Attorney General has forwarded to me for consideration and reply. You have requested an opinion of this Office concerning the mailing list of The South Carolina State Gazette, a quarterly publication of the Department of Archives and History. Specifically, you have asked whether the mailing list is public information under the South Carolina Freedom of Information Act and, therefore, available to commercial enterprises

The South Carolina Freedom of Information Act, [§ 30-4-10, et seq., Code of Laws of South Carolina](#), 1976, as amended, establishes a broad policy, providing to any person the right to inspect and copy public records of a public body. The Act specifies certain records which are deemed public and provides a number of specific and general exceptions. The mailing list is not within those deemed public in § 30-4-50; however, the mailing list must still be considered public information unless it falls within one of the excepted categories.

Section 30-4-40 enumerates those matters which are deemed by statute exempt from disclosure, including such matters as trade secrets, certain law enforcement records, investigatory techniques, salaries of certain employees, work product of legal counsel, and other matters of a similar nature. I specifically call your attention to § 30-4-40(a)(2) which states an exemption as follows, 'Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy, including, but not limited to, information as to gross receipts contained in applications for business licenses.' I am aware of no previous opinions or precedents which state that mailing lists of public agencies, stating only an individual's name and address, constitute an unreasonable invasion of personal privacy.

Finally, § 30-4-20(c) in defining the term 'public record' includes the following passage, '... nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them.' Pursuant to this section, should the South Carolina Commission on Archives and History determine that the best interest of the public is not served by disclosing the mailing list in question, then the mailing list would not be deemed a public record. Of course, the Commission, assuming such action were taken, would have to articulate some legitimate reason in support of its finding that the public interest would not be best served by disclosing the mailing list. Further, I have enclosed a copy of an opinion previously issued by Attorney General McLeod, dated May 25, 1976, wherein the Attorney General opined that the mailing list, maintained by the South Carolina Department of Agriculture, for 'The Market Bulletin' is public information. The Freedom of Information Act has been amended since 1976; however, I find nothing in the present act that would alter the Attorney General's 1976 Opinion.

***2** Should the Archives Commission not make a finding that the public interest would not best be served by disclosing the mailing list, and should you determine that the list does not constitute an unreasonable invasion of privacy, then the list must

be considered public information. That the list is currently being sought by Southern Historical Press, a commercial enterprise, would not appear to make any difference under the Freedom of Information Act. As previously stated the Act permits any person the right to inspect and copy public records; the board term 'any person' would appear to encompass a commercial enterprise or any individual working for such enterprise. With Kindest regards,

Sincerely,

Paul S. League
Assistant Attorney General

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