

1981 WL 158013 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 15, 1981

*1 Ms. Jeanne R. Hertzog
Administrative Captain
Legal Coordinator
Lexington County Sheriff's Department
Post Office Box 639
Lexington, South Carolina 29072

Dear Ms. Hertzog:

In a letter to this office you raised several questions as to whether incident reports should be destroyed when other criminal records are properly expunged and whether such reports are matters of public record.

Enclosed please find copies of previous opinions of this office concerning whether police records, including incident reports, must be disclosed pursuant to the requirements of this State's Freedom of Information Act. The July 14, 1981 opinion specifically states that:

' . . . police records, including incident reports, need not be disclosed pursuant to a request made under the Freedom of Information Act. if the incident report is a part of a file which is still active or if the incident report contains any information which might endanger the life, health, or property of any person. If a report was in a closed file, but contained the identity of an informant or disclosed a secret investigatory technique, then this data should be stricken from the report prior to its being released.

Therefore, I suggest that any questions concerning release of any such reports be resolved in conformity with such opinions.

As to your question of whether incident reports concerning juveniles should be handled any differently, I am unaware of any state statute which may be construed to categorically prevent the disclosure of such. [Section 14-21-30, Code of Laws of South Carolina](#), 1976, as amended, provides generally for the confidentiality of records of juveniles under the jurisdiction of the Family Court but includes only the official juvenile records of the Courts, the Department of Youth Services and Department of Juvenile Placement and Aftercare. However, while there may be no statutory provision mandating the confidentiality of the records of a law enforcement agency concerning a juvenile, all doubts concerning disclosure of such records should generally be resolved in the favor of keeping such records confidential.

As to whether incident reports are subject to being destroyed when other criminal records are required to be destroyed pursuant to an Order of Expungement issued, presumably, pursuant to [§ 17-1-40, Code of Laws of South Carolina](#), 1976, this office in an opinion dated February 36, 1979 stated that the referenced statutory provision:

. . . applies only to the bookkeeping entries which serve as the recording of the arrest and ensuing charge in question. Thus, the arrest and booking record, files, mug shots and fingerprints pertaining to the charge in question, may be obliterated or purged under [§ 17-1-40](#) . . . Any other material or evidence not serving as an entry made in the usual course of business for recording the arrest . . . will not be subject to the expungement statutes quoted above. Furthermore, it is opinion of this office that the work product of law enforcement agencies pertaining to investigation of criminal activity and the evidence of criminal activity, do not constitute bookkeeping entries for recording of an arrest and the ensuing charge, and are not covered by the aforesaid statutes. (Emphasis added)

*2 Inasmuch as incident reports may be considered to be the work product of a law enforcement agency, as such, they are not subject to being included in material to be expunged in accordance with an Order of Expungement issued pursuant to [§ 17-1-40](#).

As to your remaining question concerning whether any changes or additions should be made in your regulations concerning the security and privacy of criminal history records, I can only suggest that any such regulations be viewed in light of the requirements of the Freedom of Information Act. Presumably, an agency such as the Sheriff's Department, could adopt any regulations controlling public accessibility to the records of such department as long as such are in conformity with the Act and any other state statutory requirements concerning public accessibility to such records.

With best wishes,

Sincerely,

Charles H. Richardson
Assistant Attorney General

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