

1980 WL 120627 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 25, 1980

***1 SUBJECT: Child abuse, Human Affairs Act jurisdiction; Adoptions records disclosed to Human Affairs for abuse investigation; Public information adoption records to Human Affairs for abuse investigation; Court, Family, jurisdiction, Child abuse, adoption; Child abuse, Family court jurisdiction; state ??**

1. The Human Affairs Act does not require the disclosure of identifying information from adoption and child abuse records subject to the confidentiality requirements imposed upon the South Carolina Department of Social Services.
2. The power of the Human Affairs Commission to attempt a conciliatory resolution of an alleged discriminatory practice does not override the exclusive jurisdiction of the Family Court over the custody of children who have been the subject of abuse or neglect.

Virgil Conrad
Commissioner
South Carolina Department of Social Services

QUESTIONS:

1. Do the provisions of the Human Affairs Act permit the disclosure of identifying information from adoption and child abuse records which are subject to the confidentiality requirements imposed upon the South Carolina Department of Social Services?
2. May the Department of Social Services attempt a conciliatory resolution of a report of child abuse which is the subject of litigation in the Family Courts?

STATUTES:

S.C. Code of Laws, §§ 1-13-30, 1-13-80, 1-13-90, 15-45-140, 20-10-20, 20-10-120, 20-10-140, 20-10-170.

Rules and Regulations of South Carolina, 65-1(B)(4), 65-3(A)(5), 65-3(B)(11), 114-65.1(A)(4).

[45 C.F.R. 205.50.](#)

1. You have directed to this office an inquiry regarding an investigation by the Human Affairs Commission of a complaint concerning an adoption matter presently being litigated in the Lexington County Family Court. It is our understanding that the investigation is not employment related but, rather, involves a complaint against an adoption specialist who has removed children from an adoptive home based upon evidence of child abuse. No formal complaint has been filed with the Human Affairs Commission, and the adoptive parents have not requested the information concerning the allegations of child abuse which are before the Family Court. You wish to know the extent to which your records concerning the child abuse allegation may be disclosed, if at all.

It is apparent that the records in question relate to protective services initiated upon a finding of child abuse, a matter which is covered by S.C. Code, § 20-10-140 (1976). This section permits disclosure of such information to the person who is the subject

of the report of child abuse, but limits any further disclosure to staff personnel of the Department of Social Services, the Family Courts, Guardians ad Litem for the minor children, or persons engaged in a bona fide research project. Adoption records of an identifying nature are also considered confidential and are only to be inspected upon order of Court for good cause shown. [S.C. Code, § 15-45-140 \(1976\)](#). South Carolina Rules and Regulations 114-65.1(A)(4). Applicable federal regulations require that information regarding recipients of welfare services only be disclosed for purposes directly connected with the State welfare plan to persons or agencies subject to standards of confidentiality comparable to those of the Department of Social Services. [45 C.F.R. 205.50](#). See Opp. Atty. Gen., February 15, 1979. Clearly, the aforementioned authorities establish that identifying information concerning applicants or recipients of your adoption and child abuse services are to be closely safeguarded. This, of course, does not mean that these applicants or recipients cannot obtain the information by a proper request.

***2** It is readily apparent that the above-mentioned child abuse case is not the proper subject of an investigation by the Human Affairs Commission. An 'investigation' by the Human Affairs Commission is limited to facts which relate to an unlawful employment practice. [S.C. Code, § 1-13-90 \(1976\)](#), as amended. South Carolina Rules and Regulations 65-3(A)(5). A 'complainant' before the Human Affairs Commission is a person aggrieved by an unlawful employment practice under [S.C. Code, § 1-13-30\(i\) \(1976\)](#), as amended, and a 'complaint' is a written charge alleging an unlawful employment practice under [S.C. Code, §§ 1-13-80 and 1-13-90\(a\) \(1976\)](#), as amended. See also, South Carolina Rules and Regulations 65-1(B)(4). Furthermore, any information disclosed to the Human Affairs Commission may become public at the time it is offered and received into evidence at a commission hearing or Court proceeding brought in accordance with the Human Affairs Act whereby an unlawful employment practice is alleged. [S.C. Code, § 1-13-90\(c\)\(1\), \(d\)\(2\) \(1976\)](#). South Carolina Rules and Regulations 65-3(B)(11). The Human Affairs Commission may make binding rulings only upon a finding of an unlawful discriminatory practice, which is defined as an employment related practice under [§ 1-13-80](#). It is clear that the case which you refer to would not be the proper subject of a Human Affairs Commission investigation under the above provisions, inasmuch as it does not involve an employment related practice. Therefore, the confidentiality requirements imposed upon the South Carolina Department of Social Services would not permit disclosure of identifying information regarding the adoption without an order of Court for good cause shown. Certainly, information regarding the report of child abuse in this case would remain confidential unless requested in accordance with [§ 20-10-140](#).

2. It should be noted, however, that [S.C. Code, § 1-13-90\(e\) \(1976\)](#), as amended, provides a procedure by which the commission may attempt to amicably resolve a complaint of a discriminatory practice which is not employment related. It is the opinion of this office that the aforesaid provision would not require disclosure of identifying information from adoption or child abuse records since the Commission would be merely making an attempt to reach a 'conciliation agreement' between all parties involved in the case, and, if no agreement may be reached, the commission must withdraw from the matter and close its files.

It is the opinion of this office that only the Family Court may resolve a case of child abuse, since that Court has exclusive jurisdiction over such cases. The Department of Social Services is required, by law, to initiate protective services to any child who is the subject of an 'indicated report' of abuse by his or her parent, guardian or custodian, as defined under [S.C. Code, § 20-10-20\(C\)\(D\), \(M\) \(1978 Supp.\)](#). See [S.C. Code, § 20-10-120\(G\) \(1978 Supp.\)](#). The Family Courts are then charged with the sole duty of determining whether the protective services rendered by the Department of Social Services were justified and proper under the circumstances. [S.C. Code, § 20-10-120\(H\), 20-10-170 \(1978 Supp.\)](#). The Department of Social Services has no power to modify or limit this exclusive discretion of the Family Courts over child abuse cases, either by agreement or compromise. Therefore, a child abuse case which is under litigation in the Family Court is not the proper subject of a 'conciliation agreement' under the Human Affairs Act.

***3** Lindy Pike Funkhouser
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