1980 WL 121015 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 31, 1980

***1** The Honorable Joyce C. Hearn
House of Representatives
518-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:
Your letter of September 8, 1980, to Attorney General McLeod has been referred to me for research and reply. In your letter you inquired generally as to whether information regarding sexual assault victims could be obtained by interested citizens under the Freedom of Information Act.

As you may recall, we discussed this inquiry briefly over the telephone at which time you suggested that I contact Ms. Karole Jensen of the Rape Crisis Center in North Myrtle Beach for further clarification. Pursuant to your request, I discussed the matter with Ms. Jensen who informed me that her particular concern was over the records on sexual assault cases which are kept and maintained by the local law enforcement agencies.

Our office has no a previous occasion issued an opinion letter stating that the criminal records of a sheriff's office are not required to be open for inspection by the public under the Freedom of Information Act. (Letter from Richard P. Wilson, Assistant Attorney General to Sheriff Frank Powell, dated July 7, 1977). The opinion is based on two previous opinions issued by our office. 1972-73 Attorney General Opinion No. 3490, p. 80; 1972-73 Attorney General Opinion No. 3348, p. 187). I enclose for your information a copy of these previous opinions which hold that law enforcement records do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by non-disclosure. Of course, these opinions were written prior to the most recent Freedom of Information Act which specifically exempts from disclosure investigatory material that was complied in the process of detecting and investigating crime if the disclosure would harm the agency by:
(a) Disclosing 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; and

(d) By endangering the life, health or property of any person.

These exemptions would be equally applicable to sexual assault case files contained within the criminal records of the Sheriff's Office.

In addition to the above mentioned exemptions, a law enforcement agency that is reluctant to comply with a request for information regarding a sexual assault could assert that the information is of a personal nature, and that public disclosure would constitute unreasonable invasion of personal privacy. Of course, if the person seeking the information has the consent of the victim to obtain the information, this exemption would lose its effectiveness.

In any event, there are reasonable arguments which can be asserted by law enforcement officials who, for whatever reason, do not wish to release information on sexual assault cases to interested citizens. This statement holds true for all information except that of a statistical nature. Our office in a previous opinion has stated that statistical information of a non-personally identifiable nature is subject to disclosure under the Freedom of Information Act. Enclosed is a copy of this opinion (Letter of September 7, 1978, from George C. Beighley, Assistant Attorney General to J. P. Strom, Chief of SLED). Information of a statistical nature would include information regarding the number of sexual assault cases handled by the agency, the status of each case, and the final disposition of each case, etc.

***2** In conclusion, then it is clear, based on the previous opinions of this office, that only information of a statistical nature can be legitimately obtained from law enforcement agencies by interested citizens under the Freedom of Information Act.

It is my belief that the personnel of the Rape Crisis Center who wish to obtain information on sexual assault cases should not attempt to force disclosure of information under the authority of the Freedom of Information Act but should attempt to work through the Fifteenth Circuit Solicitor's Office in accordance with its policy on publicity in criminal cases toward obtaining the information desired. I trust that an arrangement can be worked out whereby the investigative reports on sexual assaults continue to be protected and the Rape Crisis Center will have access to the information to which it is legitimately entitled.

I hope this information will be helpful.
Sincerely,

B. J. Willoughby,
Assistant Attorney General

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