

1977 S.C. Op. Atty. Gen. 142 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-187, 1977 WL 24529

Office of the Attorney General

State of South Carolina

Opinion No. 77-187

June 16, 1977

**\*1** Incident and Supplemental Reports prepared by Sheriff's Officers and submitted for filing in the Records Division of the Police Service Bureau 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. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form.

Johnny Mack Brown  
Greenville County Sheriff

#### QUESTIONS PRESENTED:

- 1) Can Incident and Supplemental Reports be withheld from public disclosure?
- 2) Can such Reports be summarized and only the summaries made available?
- (3) What can be done to protect investigative reports?

#### STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, Sections 1–20 *et seq.*, (Freedom of Information Act); [Florence Morning News, Inc. v. Building Commission of Florence](#), 265 S. C. 389, 218 S. E. 2d 881 (1975); [Houston v. Rutledge](#), 237 Ga. 764, 229 S. E. 2d 624 (1976);

#### DISCUSSION OF ISSUES:

Several questions have been raised concerning the public's right to access to Incident Reports and Supplemental Reports, prepared by Greenville County Sheriff's Officers, and maintained in the Records Division of the County Police Service Bureau. These reports are prepared by officers in the course of carrying out their duties and contain data gathered in various investigations conducted by the officers. These reports may contain hearsay or factually unsupported allegations and the subject matter ranges from the license number of a stolen car to the names of witnesses to a murder. Currently these reports are available to the public when they are submitted daily to the Records Office for filing.

It is clear these reports are prepared and maintained by the Sheriff, or at his discretion, in the ordinary course and operation of his public office. Therefore such reports fit the first part of the definition of 'public records' appearing in Code of Laws of South Carolina, 1962, as amended, Section 1–20.1. However, this definition contains the following disclaimer:  
... nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public.

Therefore, the public interest exception may remove Supplemental and Incidental Reports from the definition of public records, and likewise remove the disclosure requirement under the Freedom of Information Act.

Concern has been expressed that premature publicity on certain Incident and Supplemental Reports can be prejudicial to follow up investigations and to the judicial process itself. For example, a recent report was made public immediately after being filled out, and a newspaper reporter had contacted the witness and publicized his name before the Sheriff's Department had completed its investigation. Such a procedure resulted with the witness being credited with conflicting statements about the facts of the case. Such problems present a valid governmental concern and in certain instances could create a public interest which competes with the public interest in open records. See Houston v. Rutledge, *supra*.

\*2 One alternative you have proposed for reconciling these competing interests is to supply daily summaries of all Reports in question, while denying access to the original documents. Such a course of action would be premature unless and until you as Sheriff have determined that it is not in the best public interest to release the record in question. If the public interest exception is not applicable, the records would be considered public records and the public is entitled to examine the originals. See Florence Morning News v. Building Commission of Florence, *supra*. However, as discussed hereinafter, such a summary procedure would be valid when the record in question is not subject to the Freedom of Information Act.

The public interest exception of § 1-20.1, quoted above, should be cautiously applied to avoid making the exception a device for circumventing the legislative intent of the Freedom of Information Act. Therefore, it should not be indiscriminately used to completely bar access to all investigative reports, regardless of content. However, the public interest exception can be used in each appropriate case to deny access to Incident and Supplemental Reports, when in your opinion as Sheriff, such disclosure would seriously hinder or disrupt an ongoing investigation, or would result in danger to a law enforcement officer, a criminal suspect or a member of the general public. Under such a factual situation, the public interest would best be served by not disclosing the report to the public. See Houston, *supra*.

In the event that a report was withheld from the public under the public interest exception, your release of periodic summaries of the information contained in the reports would be appropriate. Such a procedure would minimize the interference with the public's right to know, while protecting specific confidential material in the report.

It is noted parenthetically that in some twenty five different cases reviewed by the writer, most jurisdictions exclude police investigative reports from public disclosure by statute or Court decision. This is indicative of legislative and judicial recognition of the need to accord a degree of confidentiality to such reports.

#### CONCLUSION:

Incident and Supplemental Reports prepared by Sheriff's Officers and submitted for filing in the Records Division of the Police Service Bureau 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. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form.

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