

1977 S.C. Op. Atty. Gen. 146 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-193, 1977 WL 24535

Office of the Attorney General

State of South Carolina

Opinion No. 77-193

June 23, 1977

***1 In Re: Freedom of Information Act, Investigative Files of Sheriff**

Honorable Frank Powell

Sheriff

Richland County

1400 Huger Street

Post Office Box 143

Columbia, South Carolina 29201

Dear Sheriff Powell:

You have inquired whether or not you are required by the State's Freedom of Information Act [Sec. 30-3-10, et seq., 1972 Code of Laws of South Carolina] to open for inspection and copying files of criminal investigations being conducted by your Department or files of such investigations that have been conducted.

Section 30-3-30 reads in part:

‘—all public records, as defined in Section 30-3-20, shall be open to inspection and copying during the regular business hours of the custodian of the records.’

The term ‘public records’ is defined by Section 30-3-20:

‘Public records’ means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics.’

The mere fact that a writing was made by a public officer and is in his possession, constructive or actual, does not make it a public record subject to public inspection. [People v. Olson](#), 42 Cal. Rptr. 760. As with most things in this area, there is some difference of opinion among the courts of appeal concerning certain types of records. For example, it has been held [[Town Crier v. Chief of Police](#), 282 N.E. 2d 379] that a police arrest register and daily log were not public records subject to inspection when such records were not made pursuant to specific provisions of law; whereas, the Supreme Court of Ohio [[Dayton Newspapers v. City of Dayton](#), 341 N.E. 2d 576] has held to the contra.

The Supreme Court of Colorado [sitting en banc] held in 1972 that generally police records showing past arrests, convictions, and other information about individuals, should not be open to scrutiny of the public at large. Speaking of police investigatory files, the Colorado Court said in [Lasavio v. Mayber](#), 496 P 2d 1032, 1034:

‘They [police investigatory files] also contain certain investigatory information concerning the individual [subject of investigation], including complaints received from or about the person, his arrest record, and other information about the person from a variety of sources, including informants.—The trial court was—correct in denying access to these files and records under the public records law.’

I have been unable to find a reported case contra to the holding in Losavio.

In view of the foregoing, it is my opinion that your police criminal investigatory files [current or completed] are not public records within the meaning of Sections 30-3-20 and 30-3-30 subject to inspection and copying under provisions of the State's Freedom of Information Act.

Yours very truly,

*2 Joseph C. Coleman
Deputy Attorney General

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