

1977 S.C. Op. Atty. Gen. 149 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-199, 1977 WL 24541

Office of the Attorney General

State of South Carolina

Opinion No. 77-199

June 28, 1977

*1 TO: Attorney
Division of General Services

QUESTION PRESENTED:

Does the Freedom of Information Act require release of a State Agency's telephone bills?

STATUTES, CASES, ETC:

Code of Laws of South Carolina, 1962, as amended, § 1-20, et seq.;

Cooper, et al. v. Bales, et al., Op. No. 20387, filed March 17, 1977.

DISCUSSION OF ISSUES:

You have asked whether or not the Division of General Services can be required to make public information contained in State agency telephone bills. These bills are sent monthly to General Services, which administers the State telephone system. The information contained in the bills includes number charged with call, kind of call, date, time, length number called, and individual cost of each call.

Under Code of Laws of South Carolina, 1962, as amended, Section 1-20 et seq., otherwise known as the Freedom of Information Act (FOIA), certain records are made open to public inspection. Code Section 1-20.1 defines 'public records' to include all documents containing information relating to the conduct of the public's business and retained by the public agency, regardless of physical form or characteristic.

The definition of 'public records' does not include those records concerning which it is shown that the public interest is best served by non-disclosure. The definition has also been judicially interpreted to exclude records which are the result of, or subject to, discussions conducted in executive session under Code Section 1-20.3. See, Cooper, et al., v. Bales, et al., supra.

The telephone bills in the possession of General Services are records of the use of public facilities to carry out public business. They directly involve the expenditure of public funds. Therefore, unless these records can come within one of the above enumerated exceptions, they would be subject to disclosure under the FOIA.

The only exception which would possibly remove these telephone bills from public record status is the 'best public interest' exception. This exception must be narrowly applied and fully supported factually to insure it is not used to circumvent legislative intent of the FOIA.

It can be argued that disclosure of telephone bills would have a disruptive effect on the operation of state agencies, because fear of disclosure would hinder the agency's ability to gather information and to communicate rapidly over the telephone. Also, the employees making the calls may feel their rights to privacy or to self-expression are being violated.

Neither of these concerns create a great enough public interest to warrant general non-disclosure of all State telephone records. The phone calls in question should all relate to public matters and are made by public employees and officials in their public capacity and not in their private capacity. Therefore, any interference with personal, individual privacy rights would be minimal or non-existent.

*2 It therefore appears that telephone billing information generally would be subject to disclosure under the FOIA. However, under special circumstances certain telephone records might be kept confidential under the public interest exception to the FOIA. An example would be calls made by law enforcement agencies, the disclosure of which would jeopardize the safety of an individual, or hinder the investigative process. Such an exception should be narrowly applied based on the facts of each case.

In order to determine what telephone records are appropriate for non-disclosure, state agencies should be advised that telephone records are generally to be available for public inspection. The agencies should be advised to notify General Services of any telephone records they believe should not be made public, and to specify the reasons for non-disclosure. The appropriateness of non-disclosure in each case would have to be dealt with on its own merits.

CONCLUSION:

Telephone billing records for State agencies would generally be public records unless non-disclosure of a specific record can be shown to be in the best public interest. As public records, the billing information would be available for public inspection under the Freedom of Information Act.

George C. Beighley
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