

1978 WL 35021 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 7, 1978

***1 Re: Destruction of Administrative Records—Section 17-1-40**

Jacquelyn S. Dickman
Staff Attorney
Office of General Counsel
S. C. Department of Health & Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Ms. Dickman:

You have inquired on behalf of the Bureau of Drug Control, Department of Health and Environmental Control, whether the provisions of [Section 17-1-40 of the 1976 Code of Laws of South Carolina](#), require the destruction of administrative records if such records contain evidence or information which also formed the basis of a criminal charge which has been dismissed. It is our opinion that such records need not be destroyed.

The Bureau of Drug Control of the South Carolina Department of Health and Environmental Control is a law-enforcement agency within the meaning of [Section 17-1-40](#) and therefore is subject to its mandates. 1975-76 Ops. A.G., No. 4504, p. 361. However, you advise that the Bureau also carries out administrative functions of the Department in addition to those duties related to criminal enforcement. You relate that because of this dual role, some clarification is needed regarding which documents must be destroyed and which may legally be maintained. Often the same investigation leads to criminal and administrative action. If criminal charges are brought and subsequently dismissed, it is clear that the statute requires documents relating directly to criminal charges to be destroyed. Your question, therefore, concerns the Bureau's general regulatory records, such as records of audits, inspections, interviews, and other internal reports, which information may also have formed the basis of a criminal charge which has been dismissed.

[Section 17-1-40](#), *supra.*, provides:

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency. (Emphasis added)

The manifest intent of [Section 17-1-40](#) is to require the destruction of criminal records relating to nonconviction dispositions. Administrative records clearly, in our opinion, were neither intended to be nor are included within the scope of [Section 17-1-40](#), even though such records may contain information identical to that which formed the basis of a criminal charge which has been dismissed. Such administrative records, therefore, are not required by [Section 17-1-40](#) to be destroyed upon report of a nonconviction disposition relating to criminal charges. However, file records directly relating to a criminal prosecution, such as arrest warrants, search warrants, and mug shots, must be destroyed upon report of a nonconviction disposition pursuant to [Section 17-1-40](#). To the extent that an otherwise purely administrative record contains reference to a nonconviction criminal charge, the portion relating to the criminal charge should be obscured See Ops. A.G., dated May 18, 1978, a copy of which is enclosed for your convenience.

*2 I trust that the preceding discussion adequately answers your question; however, if any further explanation is required, please feel free to contact me.

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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