

1978 WL 35123 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 21, 1978

\*1 Dr. Cyril B. Busbee  
State Superintendent of Education  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Dr. Busbee:

Recently, you requested an opinion from the Attorney General's Office concerning whether or not certain information possessed by the Department of Education is subject to public disclosure under the State's Freedom of Information Act.

In particular, you have received a request for the release of information about test results on National Teacher Examinations achieved by students attending the various institutions of higher learning in South Carolina. You advised that no individually identifiable data is requested; rather, the score results for each institution of higher education are being sought.

You further advised that the information is classified by college and by teaching area, and that such results were released from the November, 1976, and February, 1977, test periods. Apparently, this release was done at the request of members of the South Carolina General Assembly. The data currently requested relates to the four administrations of the NTE given since February, 1977.

I have examined the State's Freedom of Information Act, Act No. 593 of 1978, and I can find no specific authority which would prohibit disclosure of this information. I am unaware of any State law which prohibits disclosure of the NTE results by academic institution. Further, these records are not scholastic records, as that term is commonly used.

Therefore, it appears that the only way you may avoid disclosure of this information under the State's Freedom of Information Act is under the public interest exception. This exception, appearing in Section 3(c) of the Act, reads as follows:

... Nor shall the definition of public records include those records concerning which the public body, by favorable public vote of three-fourths of the membership taken within fifteen working days after receipt of written request, concludes that the public interest is best served by not disclosing them.

It should be noted that the same information now requested has been previously made public for the 1976 and February, 1977, test results. Such a previous disclosure would make it difficult to attempt to justify non-disclosure at the present time, based on the public interest exception. However, this is a matter for the State Board of Education and is beyond the scope of this opinion.

I hope this information will be helpful to you, and with kind regards, I am  
Sincerely,

George C. Beighley  
Assistant Attorney General

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