

1975 S.C. Op. Atty. Gen. 242 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4191, 1975 WL 22486

Office of the Attorney General

State of South Carolina

Opinion No. 4191

November 20, 1975

***1** Personnel records of a faculty member at a state institution of higher learning, including confidential evaluations of teaching performance, would not be public records under the Freedom of Information Act if such materials are considered scholastic records, or if such disclosure is not in the public interest or if such materials are the product of a valid executive session.

TO: Colonel James P. Woods,
Director of The Citadel staff

QUESTION PRESENTED:

Can an assistant professor at The Citadel examine and copy his personnel file, including confidential faculty evaluations of his teaching performance?

STATUTES, CASES:

Code of Laws of South Carolina, 1962, as amended, Section 1–20 et seq.

DISCUSSION OF ISSUES:

Section 1–20 et seq., of the 1962 Code, supra, known as the Freedom of Information Act, makes certain public records open to inspection and copying.

Section 1–20.1, ‘Public records,’ sets up certain areas in which records shall not be made open to the public. Among these are scholastic records and those records concerning which it is shown that the public interest is best served by not disclosing them to the public.

The term ‘scholastic’ is defined in Webster's New World Dictionary, 2nd Ed., as ‘1. of schools, colleges, universities, students, teachers, and studies; educational; academic.’ Such a definition could be logically construed to include faculty records and professional teaching evaluations given confidentially and maintained by a public institution of higher education.

Section 1–20.1 recognizes a ‘public interest’ as follows:

. . . 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.

The determination of what is in the best public interest must initially be made by the administration of The Citadel. Such public interest exception, if raised by The Citadel, would be arguably applicable to the instant factual situation. Educational quality requires an accurate and candid evaluation of teaching skills by a teacher's supervisor. If such evaluation could not be made and kept in confidence then such evaluation would lose its honest and candid nature, and

therefore most of its value. Such a loss would be the result of public scrutiny and fear of reprisals from the dissatisfied individual evaluated. This 'chilling effect' on academic proficiency evaluations, and the resulting negative effect on the quality of the educational system, would arguably support a failure to disclose under the 'best public interest' exception.

Section 1–20.3(b) of the Act makes executive sessions closed to the public for the purposes of discussing or considering employment, compensation, promotion, demotion, discipline, release, administrative briefings, and committee reports. It follows that any record or report made at such executive session would also be confidential. If the employee records were presented or discussed in what the Act recognizes as a valid executive session, they would be protected from disclosure.

*2 The tone of the Freedom of Information Act is to make all public records open to inspection absent legal requirements to the contrary. However, the generalities of the Act make judicial interpretation inevitable before the exceptions to the definition of 'public record' and the meaning of 'not in the public interest' can be defined with accuracy.

CONCLUSION:

Under the scholastic record and public interest exceptions to public record disclosure, the Citadel could under the Freedom of Information Act refuse to disclose to an individual his personnel files, including confidential faculty evaluations of the individual's teaching performance. Also, any materials resulting from or discussed at a statutorily valid executive session would be excepted from disclosure under the Act.

George C. Beighley
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