

1973 S.C. Op. Atty. Gen. 341 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3655, 1973 WL 21106

Office of the Attorney General

State of South Carolina

Opinion No. 3655

October 31, 1973

*1 The Honorable E. L. McGowan
Commissioner
Department of Labor
Post Office Box 11329
Columbia, South Carolina 29211

Dear Commissioner McGowan:

Your letter of October 19, 1973, requests the opinion of this Office as to whether attorneys, insurance companies, and news media may obtain copies of the inspectors working papers, photographs, citation and proposes penalties which have been lodged in the records of your office pursuant to the duties and responsibilities vested in you by the provisions of Act No. 379, approved June 8, 1971 (71 Acts 505), as amended by Act Nos. 308, 309, 310 and 311, approved June 12, 1973 (73 Acts 373, 375 and 376).

Act No. 379 constitutes the State Occupational Safety and Health law. It authorizes you, as Commissioner of Labor, to promulgate rules and regulations for the purpose of attaining the highest degree of health and safety protection for employees working in South Carolina. Severe civil penalties are imposed for violation of the rules and regulations, and criminal penalties may be involved in certain circumstances.

The Freedom of Information Act broadly requires that all public records are available for public inspection, with certain exceptions, such as income tax returns and records which are required by law to be closed to the public. None of the exceptions from public disclosure appear to exist with respect to the records here discussed. The Freedom of Information Act further provides that records are not subject to disclosure 'concerning which it is shown that the public interest is best served by not disclosing them to the public. Section 1-20.1, Code of Laws, 1962, as amended.

The Department of Labor is authorized to inspect areas of employment to ascertain if there has been compliance with rules and regulations promulgated under the Occupational Safety and Health Act. The Commissioner of Labor has authority to subpoena witnesses, to take and preserve testimony, examine witnesses, administer oaths, and to interrogate any person employed at the site of employment, or the officers of an employer, and to issue citations upon a determination that a regulation has been violated. Dangerous machines found to present an imminent danger of death or serious physical injury may be precluded from use until such time as the danger is removed.

As a broad category, the records of such inspections do not appear to be exempt from disclosure under the Freedom of Information Act, but individual circumstances in each instance may indicate that the public interest would not be served by disclosure. For example, some inspections may contain information not substantiated by observation, but based upon allegations, without or without foundation in fact, and therefore ultimately subject to determination by you as to their correctness. In such circumstances, it may be that you, in your discretion, would consider that the public disclosure of such information would not be in the public interest.

*2 Therefore, it is my opinion that the records of such inspections would normally be open to public disclosure, but that in specific instances, disclosure would not be warranted in the public interest, depending upon the circumstances in individual cases. In the large majority of cases, I would estimate that the records are open to public inspection.

Insofar as citations charging noncompliance are concerned, it is my opinion that such citations are a matter of public record.
Very truly yours,

Daniel R. McLeod
Attorney General

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