



HENRY McMASTER
ATTORNEY GENERAL

May 5, 2006

The Honorable Michael E. Hunt
Sheriff, Aiken County
420 Hampton Avenue, NE
Aiken, South Carolina 29801

Dear Sheriff Hunt:

In a letter to this office you questioned the legality of releasing the names of juvenile victims.

In examining your question, it is useful to note that there are several provisions that specifically mandate a requirement of confidentiality as to certain information relating to juveniles who are involved with this State's court system, law enforcement or certain State or local agencies. As to juvenile offenders, pursuant to S.C. Code Ann. § 20-7-1360, records in the family court pertaining to juveniles "shall be kept confidential as prescribed in §§ 20-7-690 and 20-7-8510." S.C. Code Ann. §§ 20-7-8505 et seq. also provides for the confidentiality of juvenile records that are maintained by the family courts. Section 20-7-8505 states that as to juvenile records:

[t]he court shall make and keep records of all cases brought before it. The records of the court are confidential and open to inspection only by court order to persons having a legitimate interest in the records and to the extent necessary to respond to that legitimate interest. These records must always be available to the legal counsel of the child and are open to inspection without a court order where the records are necessary to defend against an action initiated by a child.

See also: Sections 20-7-8510 (A) ("...all information obtained and records prepared in the discharge of the official duty by an employee of the court or department are confidential and must not be disclosed directly or indirectly to anyone...(other than designated officials)..."); S.C. Code Ann. § 20-7-8510 (E)(2) ("[e]ach school district is responsible for developing a policy for schools within the district to follow to ensure that the confidential nature of a child offense history and other information received is maintained...."). Section 20-7-8515 (A) which relates to juveniles who are offenders states that "... law enforcement records and information identifying children pursuant to this article are confidential and may not be disclosed directly or indirectly to anyone, other than those entitled under this article to receive the information...."

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Also as to juvenile offenders, Section 20-7-8520 states that

(A) The name, identity, or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be provided to a newspaper or radio or television station unless:

- (1) authorized by court order;
- (2) the solicitor has petitioned the court to waive the child to circuit court;
- (3) the child has been bound over to a court which would have jurisdiction of the offense if committed by an adult; or
- (4) the child has been adjudicated delinquent in court for one of the following offenses:
 - (a) a violent crime, as defined in Section 16-1-60;
 - (b) grand larceny of a motor vehicle;
 - (c) a crime in which a weapon, as defined in Section 59-63-370, was used; or
 - (d) distribution or trafficking in unlawful drugs, as defined in Article 3, Chapter 53 of Title 44.

(B) When a child is bound over to the jurisdiction of the circuit court, the provisions of this section pertaining to the confidentiality of fingerprints and identity do not apply.

As to your question regarding the release of the names of juvenile victims, this State's Constitution in Article I, Section 24 includes a Victims' Bill of Rights. Such provision states in part:

(A) [t]o preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;...

(6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process.... (emphasis added).

For purposes of this provision, a "victim" is defined by section (C)(2) as

...a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful

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representative of a crime victim who is deceased, who is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

Consistent with such provisions, in my opinion, the disclosure of a juvenile victim's identity could conflict with that victim's right to be free from intimidation, harassment or abuse and conflict with that victim's right to be protected from the accused or his associates.

S.C. Code Ann. §§ 16-3-1505 et seq. provide for victims' services. A victim is defined by Section 16-3-1510 (1) as

...any individual who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a criminal offense..."Victim" also includes any individual's spouse, parent, child, or the lawful representative of a victim who is (a) deceased; (b) a minor; (c) incompetent; or (d) physically or psychologically incapacitated....

S.C. Code Ann. § 16-3-1525 (C) provides for the confidentiality of a victim's identity stating

A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving one or more victims, must provide to the jail, prison, or detention or holding facility, including a mental health facility, having physical custody of the defendant, the name, mailing address, and telephone number of each victim. If the person is transferred to another facility, this information immediately must be transmitted to the receiving facility. The name, addresses, and telephone numbers of victims and witnesses contained in the files of a jail, prison, or detention or holding facility, including a mental health facility, are confidential and must not be disclosed directly or indirectly, except as necessary to provide notifications. (emphasis added).

Subsections (D), (E) and (F) require the providing of names, addresses and telephone numbers of victims to the Department of Juvenile Justice, prosecuting agencies and summary courts. S.C. Code Ann. § 16-3-1535 (G) states that

...[t]he names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice are confidential and must not be disclosed directly or indirectly, except by order of a court of competent jurisdiction or as necessary to provide notifications.... (emphasis added).

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Consistent with the above, in my opinion, there is a basis to support the conclusion that the names of juvenile victims should not be casually released to the public. While the provisions of Title 16 dealing with victims generally do not specifically state that all law enforcement agencies should not release the names of victims including juveniles to the public, as referenced, certain agencies and departments, such as jails or other detention facilities, are specifically prohibited from releasing the names of victims except by court order or to provide required notifications.

I would note that as to juveniles who are the victims of child abuse and neglect, S.C. Code Ann. § 20-7-690 provides for the general confidentiality of records and information dealing with child abuse and neglect that are collected and maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect. By such provision, specific exceptions are made as to designated individuals, agencies and court officials.

A provision of this State's Freedom of Information Act, S.C. Code Ann. §§30-4-10 et seq. is also pertinent to your inquiry. Pursuant to Section 30-4-40(a),

A public body may but is not required to exempt from disclosure the following information:

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

- (A) disclosing identity of informants not otherwise known;
- (B) the premature release of information to be used in a prospective law enforcement action;
- (C) disclosing investigatory techniques not otherwise known outside the government;
- (D) by endangering the life, health, or property of any person; or
- (E) disclosing the contents of any intercepted wire, oral, or electronic communications not otherwise disclosed during a trial. (emphasis added).

As indicated in an opinion of this office dated July 24, 1984, incident reports are generally considered to be public information. However, a prior opinion of this office dated June 17, 1999 indicated that pursuant to Section 30-4-40, law enforcement agencies have "...the discretion to exempt from disclosure materials which satisfy the requirements listed therein." Therefore, the provisions of the FOI cited above would support not releasing the names of a juvenile victim if it was determined that the release of such information would endanger the life, health, or property of the juvenile. For instance, a prior opinion of this office dated December 31, 1980 determined that, generally, information regarding sexual assault victims could be withheld from release to the public. However, a prior opinion of this office dated September 22, 1995 determined that there would be no prohibition to releasing the names of juveniles who are considered "missing".

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In summary, there are statutory provisions which specifically provide for the confidentiality of records and information as to juvenile offenders. However, I am unaware of any provisions that specifically state that a sheriff's department should not release the names of victims including juveniles. Nevertheless, as referenced, certain other agencies and departments are prohibited from releasing the names of victims. In my opinion, consistent with the recognized rights of victims in this State to be protected, I would advise against the casual release of the names of juvenile victims to the public. Such would be consistent with the referenced discretion of a law enforcement agency to exempt certain information from public disclosure as set forth in this State's freedom of information act.

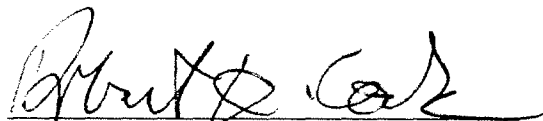
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General