



ALAN WILSON
ATTORNEY GENERAL

August 20, 2013

Debbie D. Curtis, Crime Victims' Ombudsman
Office of Crime Victims' Ombudsman
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Ombudsman Curtis:

Attorney General Alan Wilson has referred your letter of June 6, 2013 to the Opinions section for a response. The following is our understanding of your questions presented and the opinion of this Office concerning the issues based on that understanding.

Issues: Your letter expressed concern that a law enforcement agency denied a Victim¹ access to documents concerning the criminal investigation before trial under the Victim's Bill of Rights found in the South Carolina Constitution because the agency said there was no mechanism for "reasonable access" as cited in the S.C. Constitution and because giving the Victim the documents would have been in violation of that agency's internal policy. The law enforcement agency chose instead to provide the documents to the Victim based on a South Carolina Freedom of Information Request ("FOIA request"). You specifically ask:

- 1) What is considered "reasonable access" as it is found in the Victim's Bill of Rights in the S.C. Constitution Article 1, Section 24 (A)(8)?
- 2) When is a case considered "closed" before trial as found in the Victim's Bill of Rights in the S.C. Constitution Article 1, Section 24 (A)(8)?

Law/Analysis:

The Victim's Bill of Rights is found in Article 24 of the S.C. Constitution. It states that:

(A) To 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;
- (2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;

¹ "Victim" is capitalized because it is a defined legal term. The definition is found in Article 1, Section 24(c)(2) of the South Carolina Constitution.

- (3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;
- (4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;
- (5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;
- (6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;
- (7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;
- (8) **have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;**
- (9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;
- (10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;
- (11) a reasonable disposition and prompt and final conclusion of the case;
- (12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

(B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

(C) For purposes of this section:

- (1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- (2) "Victim" means 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 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.
- (3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259.)

S.C. Const. Art. 1, Section 24.

A law enforcement's internal policy may never override the South Carolina Constitution. The law enforcement agency is required to submit "all documents related to the crime against the victim before trial." S.C. Const. Art. 1, § 24(A)(8). A FOIA request would not be a sufficient remedy for a Victim as it could be possible to have a document that would be subject to disclosure under the Victims' Bill of Rights in the S.C. Constitution and not pursuant to FOIA. A writ of mandamus is the proper channel to enforce a Victim's rights pursuant to the S.C. Victim's Bill of Rights. Ex parte Littlefield, 343 S.C. 212, 540 S.E.2d 81 (2000).

While "reasonable access" is not defined in Article I, Section 8 of the S.C. Constitution, this Office would suggest a plain meaning approach to mean access that is reasonable, presumptively in the view of a neutral third party. When construing a constitutional amendment, the court applies rules similar to those relating to the construction of statutes. McKenzie v. McLeod, 251 S.C. 226, 161 S.E.2d 659 (1968). The court's primary function in interpreting a constitutional amendment is to ascertain and give effect to the intention of its framers and the people who adopted it. Id. In attempting to discover the intent, the court may consider the history of the times in which the amendment was framed, the object sought to be accomplished, and legislative interpretation of its provisions. Reese v. Talbert, 237 S.C. 356, 117 S.E.2d 375 (1960). The court must give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Davis v. County of Greenville, 313 S.C. 459, 443 S.E.2d 383 (1994). As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Since that section of the S.C. Constitution appears clear and unambiguous in giving Victims of crimes access to all documents relating to the crime before trial, this Office will not look further to determine the meaning of the language. This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598

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(2006).² Additionally, the intent of the South Carolina Constitution is evident in giving clear, defined rights to Victims of a crime.

As to the second issue presented in your letter, this Office would again take a plain meaning approach when interpreting what “after the conclusion of the criminal investigation” means, as found in Article 1, Section 24 (A)(8) of the S.C. Constitution. Id. An investigation is not over just because the officer completed an incident report. Many prosecutions are investigated up to the very day of trial. This Office is going to refrain from suggesting a hardline rule for when the conclusion of a criminal investigation is, as every investigation can be unique, but instead we would encourage a case-by-case analysis.

Conclusion: Regardless of the South Carolina Freedom of Information Act and any internal law enforcement policies, the Victim of a crime in South Carolina has a constitutional right to access the documents relating to the crime in which they were involved in before trial. However, this Office is only issuing a legal opinion. It is the court’s job to interpret the South Carolina Constitution. Until the court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² For additional information on “reasonable access,” this Office would suggest looking to case law and opinions by this Office on the South Carolina Freedom of Information Act (FOIA) which held FOIA exemptions are to be “narrowly construed to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of government.” See, e.g., Evening Post Publishing Co. v. City of North Charleston, 363 S.C. 452, 611 S.E.2d 496 (2005); Campbell v. Marion County Hospital District, 354 S.C. 274, 580 S.E.2d 163 (Ct. App. 2003); Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001); Op. S.C. Atty. Gen., 2012 WL 3875118 (August 28, 2012).