



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 24, 1995

Ms. Patricia Welborn
9 Cuttino Circle
Greenville, South Carolina 29609

RE: Informal Opinion

Dear Ms. Welborn:

Thank you for your recent letter to Attorney General Condon, which he has referred to me for review and response. As the Administrative Supervisor of Taylors Fire and Sewer District, you have inquired as to making keys to the office and filing cabinets available to one of the members of the District's governing body. You advised that the member takes home information which was obtained from the District's personnel and other records, enters that information on a home computer, and sometimes provides you a print-out from the computer. You are concerned about your liability or accountability should a file or invoice be missing or misplaced. You have asked three questions: (1) whether an elected official has an individual right to access this information and remove it from the office; (2) whether you are required to provide keys to all of the records so that they may be used when no one else is there; and (3) whether you are to be held accountable for all transactions when so many people have access.

The Taylors Fire and Sewer District was created pursuant to Act No. 1099 of 1958, as amended. In section 3 of that act, the section which enumerated powers and duties of the District's governing body, subsection (4) authorized the governing body to "make bylaws for the management and regulation of its affairs." Further, subsection (17) authorized the governing body to "[a]ppoint officers, agents, employees and servants, prescribe the duties of such, fix their compensation, and determine if and to what extent they shall be bonded for the faithful performance of their duties." The District's governing body therefore has the authority to enact bylaws which would provide for matters such as who may have keys to the office and filing cabinets, reasonable access to

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records for members of the public (pursuant to the Freedom of Information Act) and members of the governing body (by virtue of their being members of the governing body), responsibilities of the District staff with respect to records and access, and the like. I am not aware of a state law which would say that members of the governing body of a public entity do not have unlimited access to the records of that entity; such is a matter of policy for the entity to address.

In response to your first question, I am enclosing copies of Ops. Att'y Gen. dated August 18, 1983, and December 2, 1977, concerning the right of a county council member to have access to personnel records of county employees. While the opinions respond to the question in terms of home rule statutes, the underlying principles would be applicable to the situation you have raised. A member of the governing body of an entity needs access to such records to be able to do the job he or she was elected to do. (As the opinions point out, even the public has access to some of these records, pursuant to the Freedom of Information Act.) However, there are some statutes within the Public Records Act, S.C. Code Ann. §30-1-10 et seq., which require consideration, as well.

As a special purpose district, the Taylors Fire and Sewer District would be a "public body" for purposes of the Public Records Act. §30-1-10 (B). The records of the District would be considered "public records" as that term is defined in §30-1-10 (A), which refers to the definition of "public record" contained in the Freedom of Information Act. Section 30-1-20 provides as to the custodian of records that

[t]he chief administrative officer of any agency or subdivision or any public body in charge of public records or creating, filing, or keeping public records is the legal custodian of these records and is responsible for carrying out the duties and responsibilities of this chapter which are assigned to public agencies, bodies, offices, or subdivisions. ...

The custodian of public records has a statutory responsibility to protect public records, as described in part in §30-1-70:

The legal custodian of public records shall protect them against deterioration, mutilation, theft, loss, or destruction and shall keep them secure in vaults or rooms having proper ventilation and fire protection in such arrangement as to be easily accessible for convenient use. They must be kept in the buildings in which they are ordinarily used except in cases where they may be transferred for retention or disposal in accord with Sections 30-1-10 to 30-1-140 or for special public display by the appropriate authority. ...

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Criminal penalties are provided for violations of the Public Records Act. As to a public official or the custodian of public records, §30-1-140 provides:

A public official or custodian of public records who refuses or wilfully neglects to perform any duty required of him by Sections 30-1-10 through 30-1-140, including the transfer of records to storage facilities approved by the Archives, is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five thousand dollars.

In addition, §30-1-30 provides:

Any person who unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates, secretes, or destroys it is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five thousand dollars.

These statutes and criminal penalties should be taken into account by the governing body of the District in promulgating bylaws concerning access of anyone to the public records of the District.

As to whether you are required to provide keys to the office and the filing cabinets containing personnel and other files, such is a matter best addressed by a policy or bylaw of the governing body, as would be the question of the use of records when no one else is there. Such would come within the "management and regulation" of the affairs of the District. As indicated above, the requirements of the Public Records Act should be taken into consideration when such policy or bylaw should be adopted.

As to the question of your accountability for all transactions when so many people have access to records of the District, such would depend on all attendant facts and circumstances should a record be missing, misplaced, destroyed, or the like. Certainly the custodian of public records has a duty to safeguard those records, see §§ 30-1-20 et seq., S. C. Code of Laws (1976, as revised 1991), but how the records are to be safeguarded would be a matter to be discussed and decided by the governing body of the District. You may wish to discuss your concerns about accountability with the governing body. It cannot be said that you would or would not be held accountable without a review of the attendant facts and circumstances.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to

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the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it is as responsive to your questions as is possible under the circumstances.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

Enclosures