

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

March 1, 1991

The Honorable James L. Solomon, Jr.
Commissioner, South Carolina Department
of Social Services
P. O. Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

You advise that the State Department of Social Services has been requested by the Joint Legislative Committee on Children to appear before the Committee and voluntarily provide a full briefing regarding a specific child protective services case which has been the subject of recent attention. You also advise that the Committee has indicated its willingness to seek a subpoena if the Department is unable to comply with the request for a voluntary briefing. I understand that the General Counsel to the Department has advised you that the information or records requested by the Committee are not subject to disclosure pursuant to S.C. Code Ann. § 20-7-690. In this statutory provision, the General Assembly has made confidential, with certain narrow exceptions, all child abuse information and reports maintained by the Department. You ask the opinion of this Office whether the requested information may be voluntarily disclosed to the Committee.

The State has firmly declared that its policy regarding abused and neglected children is to effect prevention and protection by establishing a system of reporting, investigation, intervention, and provision of services in order to safeguard endangered children and preserve family life. S.C. Code Ann. §§ 20-7-20; 20-7-480; 20-7-650(A). See also S.C. Atty. Gen. Op. June 22, 1990.

The General Assembly clearly recognizes and appreciates that confidentiality is often necessary to encourage abuse reporting and to protect investigations as well as to foster the stabilization of the family unit; nevertheless in some discrete instances the General Assembly, just as a court, may determine that disclosure of this confidential information is necessary to safeguard the children of this State and the system meant to serve them. In each instance, important privacy interests must be balanced against the need for disclosure.

The Honorable James L. Solomon, Jr.
Page 2
March 1, 1991

Here, the General Assembly has plainly determined, by virtue of S.C. Code Ann. § 20-7-690, that, with certain specific exceptions, "(a)ll reports and information collected ... (concerning child abuse or neglect) maintained by the State Department of Social Services, local child protective service agencies, and the Central Registry of Child Abuse and Neglect are confidential." A criminal enforcement provision subjects persons who unlawfully disclose this confidential information to a fine and/or imprisonment. S.C. Code Ann. § 20-7-690(A). Earlier opinions of this Office have recognized S.C. Code Ann. § 20-7-690 as a confidentiality statute. S.C. Atty. Gen. Op. January 25, 1980 (Information regarding reports of child abuse are confidential and may not be disclosed by the Department to the Human Affairs Commission); S.C. Atty. Gen. Op. December 7, 1983 (Legislative intent is to ensure the confidentiality of child abuse reports).

We recognize, however, that the General Assembly in an effort to balance its need for information against privacy interests, has enacted general statutes to provide a procedure by which disclosure of otherwise private or confidential matters may be authorized in proceedings before it. The General Assembly has established with respect to certain joint study committees a procedure in which a subpoena may be issued to compel the attendance of witnesses or production of documents or other relevant records. See S.C. Code Ann. §§ 2-69-20; 2-69-40. The General Assembly has incorporated into this procedure an apparent means to protect a person who is compelled by the General Assembly to disclose confidential or private matters from possible criminal or civil action stemming from the disclosure. Any person or entity served with a subpoena may request that the committee issue an order protecting the legal rights involved. The General Assembly has further established that good faith reliance upon its subpoena is a defense to any action arising because of the disclosure. See S.C. Code Ann. §§ 2-69-50 and 2-69-70. The General Assembly has also determined that the requesting Committee is in the best position to balance the particular privacy considerations of the individuals involved against the discrete needs of the General Assembly and the role of the particular committee involved. The Committee will need to balance these important interests in order to assign priority to the interest it deems paramount in order to determine the extent and necessity of disclosure in a given situation.

It appears, therefore, that the subpoena procedure established by the General Assembly would be the appropriate process in this instance to resolve these delicate considerations. Clearly, pursuant to Section 2-69-50, the Committee is authorized to determine whether to revoke or limit its request; or whether a protective order is necessary or appropriate to protect the considerations of privacy that underlie § 20-7-690 and, if so, the form which such an

The Honorable James L. Solomon, Jr.

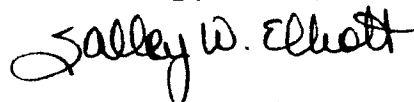
Page 3

March 1, 1991

order will take. 1/ In making its determination the Committee may consider such factors as the impact of disclosure on various privacy interests involved; whether the disclosure would result in the premature release of information to be used in a law enforcement action or family court proceeding; whether the disclosure would result in the release of investigatory techniques not otherwise known; whether the information is necessary to and falls within the scope of a legitimate legislative purpose; whether the disclosure would cause unreasonable harm, embarrassment, oppression or undue burden to victims, persons reporting and those the subject of the report and possibly wrongfully accused; the extent disclosure would chill the possibility of abuse reports and free communication with victims and persons with relevant knowledge; whether the information has been made public through some other source; whether the information may be obtained through other less intrusive means; the need for legislative investigation or study prior to the conclusion of other investigations or proceedings; the relative need for particularized disclosure as opposed to provision of nonidentifying information; and whether disclosure is related to and would result in harm to a criminal investigation or family court proceeding. 2/ See S.C. Code Ann. §§ 30-40-4(a)(3); 2-69-40; 20-7-480; 20-7-10.

I hope this has been responsive to your inquiry and invite you to contact me if I can be of further assistance.

Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

1/ See S.C. Code Ann. § 2-69-60 which deals with enforcement of subpoenas by access to the courts. Of course, this issue may also be resolved by the courts of this State.

2/ We would certainly suggest that the Committee communicate with prosecutors and law enforcement officials to determine the status of any ongoing investigation.