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Office of the Attorney General

Opinion No 85-63
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ATTORNEY GENERAL

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June 26, 1985

The Honorable Patsy S. Stone
Judge of Probate, Florence County
City-County Complex, Box L
Florence, South Carolina 29501

Dear Judge Stone:

By your letter of May 27, 1985, you have asked this Office how to make your records of marriage licenses and applications available to the public, including representatives of various commercial enterprises. You have indicated that your practice has been to restrict access to the records, charging a fee for your staff to provide information from applications to those individuals who required or requested such information.

The Judge of Probate is required by Section 20-1-340, Code of Laws of South Carolina (1976), to keep records of marriage licenses and applications. Thus, these records would be included within the definition of "public records" contained in Section 30-4-20(c) of the Code 1/ and are therefore subject to the terms

1/ Section 30-4-20(c) provides in pertinent part that

"Public record" includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of or retained by a public body. ...

See also Ops. Atty. Gen. dated November 2, 1983 (fn. 1) and May 27, 1980, as to applicability of the Freedom of Information Act to various court records.

REQUEST LETTER

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of the Freedom of Information Act, Section 30-4-10 of the Code. In this regard, this Office concurs in the conclusions of Louis L. Rosen, Director of Court Administration, in a letter to you dated June 13, 1985.

The General Assembly, in its findings in the Freedom of Information Act, Act No. 593 of 1978, stated that

it is vital in a democratic society that public business be performed in an open and public manner as it conducts its business so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, this act is adopted, making it possible for citizens, or their representatives, to learn and report fully the activities of their public officials.

Section 2 of Act No. 593 of 1978 (emphasis added). Because marriage records of the Probate Court are public records and are of general public importance, 52 Am.Jur.2d Marriage §41, and further reflect the activities of the Probate Court, it is appropriate to determine how the public may have access to these records in keeping with the spirit and purpose of the Freedom of Information Act.

The right of the public to inspect or copy public records is provided for in Section 30-4-30 of the Code, which states in pertinent part:

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Such records shall be furnished at the lowest possible cost to the person requesting the records. Records shall be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is

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equally convenient for such public body to provide the records in such form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees shall not be charged for examination and review to determine if such documents are subject to disclosure. Nothing in this chapter shall prevent the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of such costs prior to searching for or making copies of the records.

* * *

You have indicated that you charge a fee for providing information from records to individuals requesting such information; as indicated above, it is permissible to charge a fee to search for or make copies of a record. You did not advise us of, and we do not comment herein on, the fee being charged by your office to provide this public information. A prior opinion of this Office, No. 4512 dated November 4, 1976 (enclosed), provides guidance as to the establishment of an internal policy to handle requests from the public for an agency's records.

We would advise that a system of allowing access to official records through a staff member and by charging a fee appears to comport with the cited provisions of the Freedom of Information Act. The Act, as stated, guarantees to the public (commercial venturers or anyone else) the right to inspect or copy a public record, within the guidelines stated in Section 30-4-30 of the Code. The Act contains no requirement that an individual necessarily be permitted to actually go through the physical records of a public body to locate those records which he may need, though the public body could permit such a search if its records were set up in a manner conducive to such a search by the public. Whether access is permitted by the public directly or through staff of a public body, we would reiterate from Op. Atty. Gen. No. 4512, supra, that "any system must be carefully considered to make sure it does not, by design or implication, inhibit or reduce the public's ability to examine public records."

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We hope that the foregoing advice will be helpful to you.
Please advise if additional assistance or clarification should
be necessary.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:djg

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: Louis L. Rosen, Director
South Carolina Court Administration