

1978 WL 34812 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
March 27, 1978

*1 Mr. Harry W. Davis, Jr.
Director
South Carolina Department of Juvenile Placement And Aftercare
P. O. Box 5535
Columbia, S. C. 29250

Dear Mr. Davis:

You have requested an opinion of this Office as to how long the records pertaining to a juvenile should be kept before they are destroyed. Two important issues arise from your question. The first, which your question seems to assume, is whether juvenile records can be destroyed. The second question which hinges on the answer to the first is what constitutes for purposes of destruction a reasonable period of retention.

In 1973 a statute was enacted by the General Assembly which generally provides for the retention and disposal of public records of this State and its political subdivisions (Act No. 291 of 1973, as codified in Section 30-1-10—[Section 30-1-170 of the 1976 Code of Laws of South Carolina](#), as amended).

Section 30-1-10 defines the term 'public records' in part as follows:

'Public records' means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency, regardless of physical form or characteristics . . .

As to the retention and disposal of public records, Section 30-1-90 provides:

. . . when requested by the (S.C. Department of Archives and History), agencies and subdivisions shall assist the Archives to prepare an inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision or the head of the agency having custody of the records, the Director of the Archives, and in case of records of state . . . agencies, the State Budget and Control Board. This schedule shall serve as authorization for the destruction of records retained for the stated time period . . .

In Section 30-1-110 the Act further provides:

If any public records of any agency or subdivision in the custody of the Archives prove to be of insufficient value to warrant permanent preservation, the Director (of the Department of Archives and History), with the approval of the Archives and History Commission, may submit a statement or summary of the records or material to the State Budget and Control Board and to the agency or subdivision certifying the type and nature of the records or material and requesting approval of the destruction or disposal request. Upon receipt of such approval, the Director may destroy or dispose of the public records . . .

The core issue of the first question is whether juvenile records are considered 'public records' under the Act and hence subject to the above provisions. Section 14-21-30 requires that juvenile records be treated as privileged information open for inspection only to persons with legitimate interest and upon judicial consent. While Section 30-1-10 excludes from the definition of public records those records required to be closed or restricted to the public, it further provides that for purposes of records management, closed and restricted records may be disposed of in accordance with the provisions of Section 30-1-10 to Section 30-1-140 as set forth above for the disposal of public records. Therefore, it is our opinion that juvenile records may be destroyed in the prescribed manner.

*2 There is no statutory authority which provides a specific length of time for juvenile records to be retained. In the absence of any such authority, the question as to what constitutes a reasonable period of time for keeping juvenile records becomes a policy decision for the individual agency. You present three questions in your letter which we contend are important considerations in determining the appropriate length of time to retain juvenile records. These considerations include:

1. The possibility of a juvenile record being admitted in an adult proceeding.
2. The possibility of a juvenile record being obtained under the Freedom of Information Act.
3. The possibility of a juvenile record being needed in a subsequent civil action after the juvenile reached majority.

These considerations as a whole are broad and general in nature and cannot effectively be dealt with in this manner. If you can relate specific situations to these generalizations and would like an opinion from our Office, please feel free to contact us. I can inform you, generally, that by previous opinion of this Office juvenile records have been considered excluded from coverage under the Freedom of Information Act.

In conclusion, it is the opinion of this Office that juvenile records may not be destroyed without appropriate approval in the prescribed manner. The appropriate party to contact in this regard is Mr. William F. Duncan, State Records Survey, S. C. Department of Archives and History at 758-5967. The length of time for which juvenile records must be kept is not regulated or provided for by law and is therefore a policy decision for the Director of Juvenile Placement And Aftercare.

Thank you for your inquiry and please let us know if we can be of further assistance.

Very truly yours,

B. J. Willoughby
Staff Attorney

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