

1976 WL 30509 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 2, 1976

\*1 Mrs. Ann Eastland  
Citizens Service Coordinator  
Governor's Office of Citizens Service  
211 Century Plaza  
Suite 100-6  
Greenville, South Carolina 29607

Dear Mrs. Eastland:

Thank you for your telephone call and letter of July 27 to this Office.

The question of the legality of agencies exchanging information about their clients without a consent form is very complicated. Since the legality of a particular exchange might depend upon the authority under which the agencies involved operate and the nature of the information being transferred, questions about exchanging information could best be handled on a case by case basis rather than by our office's issuing a blanket opinion.

I am enclosing some of the various state and federal statutes and rules and regulations as examples of the complexity of the law in this area. In particular note that while there is a federal Freedom of Information Act, [5 USC § 552](#), another federal statute, [5 § 552a](#) imposes conditions on the disclosure of records maintained on individuals by federal agencies that are not required to be disclosed by [Section 552](#). In addition to [§ 552a](#), more specific provisions are made for disclosure with and without consent of drug abuse prevention program patient records under [21 USC § 1175](#) that reach beyond the federal agencies to programs that are only indirectly assisted by the federal government. Along with these federal laws various State laws exist such as South Carolina's Freedom of Information Act, [§ 1-20, et seq.](#), 1962 South Carolina Code, as amended, and [§ 71-285](#), 1962 South Carolina Code, as amended, which requires that certain vocational rehabilitation records not be disclosed without consent. In this latter section, the overlapping of federal and state provisions can be seen in that [§ 71-285](#) just requires 'written consent' while HEW regulation [45 CFR § 1361.47](#), which applies to the same program, requires an 'informed' written consent, a tougher standard.

As the answer to whether an exchange of information without consent would be legal might vary on a case by case basis so might the content of a required consent form vary depending on the particular provisions of state and/or federal law. For example, a tougher federal standard for consent by vocational rehabilitation clients might require a consent form different from that which might be required by the state statute alone. Thus, because the required wording of a consent form might vary depending on the applicable law, the matter of what wording should be used should be handled on a case by case basis.

Counsel for the various agencies should be able to determine the legality of exchanges in which their agencies are involved and recommend the wording for a consent form if required. If an agency is federal, or federally funded, the counsel for that federal agency should be consulted. As for agencies wholly, or partly, controlled by State and local governments, some of the major State agencies have their own attorneys while most municipal and county governments have counsel. Charitable organizations and major church denominations might have attorneys in their national headquarters that could answer your question. In any case, if a particular agency, or organization, does not have counsel or if an agency having counsel wishes to confer with us, we would be happy to give whatever assistance would be needed.

\*2 I hope that the information in this letter will be of help to you. Again, please do not hesitate to contact this office if we can be of further assistance to you.

Very truly yours,

Victor S. Evans  
Deputy Attorney General

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