



ALAN WILSON  
ATTORNEY GENERAL

August 3, 2020

D. Malloy McEachin, Jr., Esq.  
County Attorney  
Florence County  
180 N. Irby St. MSC-XX  
Florence, South Carolina 29501

Dear Mr. McEachin:

We received your letter requesting an opinion of this Office on behalf of Florence County. By your letter, you informed us that "Florence County routinely receives request from out of state entities for information that is to be used for a commercial purposes, in other words to establish a revenue stream for the requestor of the information." Citing section 30-2-50 of the South Carolina Code, you ask "is there any responsibility on the County regarding section 30-2-50?" In addition, you ask "is there any enforcement of this code section and if so by whom?"

#### Law/Analysis

Section 30-2-50 of the South Carolina Code (Supp. 2019) is part of the Family Privacy Protection Act originally passed by the Legislature in 2002. 2002 S.C. Acts 225. Prior to 2017, the Legislature specified section 30-2-50 applied only to state agencies. In 2017, the Legislature added language making it applicable to local governments as well. Currently, section 30-2-50 states as follows:

(A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity

obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.

S.C. Code Ann. § 30-2-50 (Supp. 2019).

Section 30-2-50(B) makes clear a local government, such as a county, is responsible for providing notice to those seeking personal information that they cannot use it for commercial solicitation. We imagine this could be accomplished by providing the requesting entity with such a notice when providing information in compliance with the Freedom of Information Act (“FOIA”). However, section 30-2-50(C) goes further to also require local governments to “take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.” The statute does not elaborate on what such “reasonable measures” are and therefore, this language is subject to interpretation.

Given that the statute specifically requires notice be given to entities requesting personal information, we believe “reasonable measures” go beyond giving notice and involve some sort of action on behalf of the local government to ensure the information will not be used for commercial solicitation. The determination of what measures should and can be taken by a local government are questions of policy, which are beyond the scope of an opinion of this Office. Op. Att’y Gen., 1984 WL 159913 (Aug. 28, 1984) (stating our Office cannot make policy decisions for public entities). Furthermore, whether a particular measure is reasonable involves a factual determination, which is also beyond the scope of an opinion of this Office. See Op. Att’y Gen., 2015 WL 4497734 (S.C.A.G. July 2, 2015) (“[A]s we have cautioned in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts.”). Nonetheless, section 30-2-50 places some responsibility on local governments to protect personal information from being used for commercial solicitation.

You also inquired as to the enforcement of the requirements in 30-2-50. Section 30-2-50 does not specify who enforces its requirements. Presumably, a local government could refuse the release of personal information if it reasonably believes the information will be used for commercial solicitation. Additionally, subsection (D) makes using this information for commercial solicitation a misdemeanor. Because this is a state statute, any law enforcement agency with jurisdiction may enforce this provision. See Op. Att’y Gen., 2017 WL 6940255 (S.C.A.G. Dec. 29, 2017) (“[T]o the extent that any of the proscribed behavior violates a state statute, then a law enforcement officer with jurisdiction could enforce those state laws.”).

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**Conclusion**

Section 30-2-50 places responsibility on local governments to both notify those seeking personal information under FOIA that such information cannot be used for purposes of commercial solicitation and to take “reasonable measures” to ensure such information is not obtained or distributed for commercial solicitation. What measures a local government takes to satisfy these requirements is a matter of policy, which is beyond the scope of an opinion of this Office. However, we believe section 30-2-50 places some responsibility on local governments to gain assurance prior to the release of personal information that it will not be used for commercial solicitation. Additionally, section 30-2-50 contains a provision prohibiting those entities requesting personal information from using it for commercial solicitation. If an entity violates this portion of the statute, subsection (D) makes the violation a misdemeanor and therefore, enforceable by any law enforcement agency with jurisdiction.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General