State of South Carolina
Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

September 4, 2014

Mr. Drew Smith
WSPA-TV 7
250 International Drive
Spartanburg, South Carolina 29303

Dear Mr. Smith,

On August 13, 2014, our office received on behalf of the Office of Executive Policy and Programs, Office of Economic Opportunity your Freedom of Information Act request for the following:

> ...[A] copy of the report that James Miller and the Office of Economic Opportunity presented to the Piedmont Community Actions board at a meeting last week[, August 4-8, 2014].

Be advised that the report you have requested has been determined to qualify as audit data, a preliminary report, or an informal working document, which is exempt from disclosure pursuant to guidance from an opinion from the South Carolina Attorney General. Op. S.C. Atty. Gen., 1977 WL24474 (May 2, 1977). Enclosed is a copy of the Opinion for your convenience.

At this time, our office has been notified by the Office of Economic Opportunity that a final report can be expected to be issued in late 2014 or early 2015, which, as a final report, would be made available to the public. Should you wish to submit a request for the final report, then please submit your request in writing to our office at a later date.

If you have any questions, please let me know.

Sincerely,

Swati Patel/rss

Swati S. Patel
Chief Legal Counsel

SSP/rss

Enclosure

cc: Gary Anderson, Director of Administration, Office of Executive Policy and Programs
James Miller, Director, Office of Economic Opportunity

1977 S.C. Op. Atty. Gen. 111 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-133, 1977 WL 24474
Office of the Attorney General

State of South Carolina
Opinion No. 77-133
May 2, 1977

*1 The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report.

TO: Mr. William T. Putnam
State Auditor

QUESTION PRESENTED:

(1) Must audit data pertaining to the acts of specific individuals be released under the Freedom of Information Act?

(2) Since a preliminary report was made, must that data be made available to the press prior to the completion of the entire audit?

(3) Must informal working documents be made available along with formal audit reports?

STATUTES, CASES, ETC.

Code of Laws of South Carolina, 1962, as amended, Section 1.20, et seq.;

Cooper, et al. v. Bales, et al., Op. No. 20387, filed March 17, 1977.

DISCUSSION OF ISSUES:

You have raised three questions concerning Code Section 1.20 et seq., hereinafter referred to as the Freedom of Information Act (F. O. I. A.). All three of these questions have been conclusively answered in the recent South Carolina Supreme Court case of Cooper, et al. v. Bales, et al., supra.

One of the most important findings of the Court in Cooper is that the public records section of the F. O. I. A. and the public meeting section must be read in pari materia. That is, those documents which are used in, or the result of, a valid executive session, are not made public by reading the public records section in isolation from the remaining sections of the Act. Therefore, any documentary material subject to discussion in a valid executive session is not reachable under the F. O. I. A.

In Cooper, the Court found that proposed school budgets were incomplete working papers utilized for staff administrative briefings on proposals and revisions of budget items, and were protected from disclosure by the F. O. I. A. The papers there in question also contained personnel matters such as possible job eliminations, reassignment of positions, and salary calculations. The Court held:
As administrative briefing material and privileged subject matter, the proposed budgets are protected by the F. O. I. A.

It is the Opinion of this Office that an interim, preliminary audit report, prepared and presented as an administrative briefing, need not be made public under the F. O. I. A.

It is our further Opinion that personnel matters examined or discussed in the preliminary audit data collection, and presented as incomplete working data in an administrative briefing, need not be made public under the F. O. I. A.

It is our further Opinion that since the final audit report will be presented to the state agency and made public, the informal working papers would not need to be made public. The reason for such non-disclosure is two-fold. First, these items of informal data constitute part of the incomplete working papers used as part of an administrative briefing. Second, the public interest exception itself would support a decision to not disclose the informal working documents. Such material is gathered or created by each auditor individually and is designed solely for his convenience or edification. Potential public disclosure would inhibit an auditor from collecting all data available, and later determining its relevance, if any. Also, such informal data may contain information or opinions which later proved to be erroneous, and public disclosure of such material could create serious injustice and confusion.

CONCLUSION:

***2** For the reasons outlined herein, the F. O. I. A. would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) Informal working documents collected in preparation for conducting an audit and preparing a final report.

George C. Beighley
Assistant Attorney General

1977 S.C. Op. Atty. Gen. 111 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-133, 1977 WL 24474

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