

State of South Carolina

State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
BRIAN M. BARNWELL
SCOTT E. FRICK



AJ HOLLOWAY
DON JACKSON
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

SEC AO2022-001

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SUBJECT: Confidentiality Provisions of the Ethics Act

SUMMARY: The State Ethics Commission (“Commission”) construes Section 8-13-320(10)(g) of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (“the Ethics Act”) to apply only to the Commission.

QUESTION: Commission staff has requested a formal Advisory Opinion to provide clarity on the application of Section 8-13-320(10)(g) of the Ethics Act.

APPLICABLE LAW:

Section 8-13-320(10) provides, in relevant part:

- (g) All investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this section.
 - (i) After a dismissal following a finding of probable cause, except for dismissal pursuant to item (10)(b), or a technical violation pursuant to Section 8-13-1170 or 8-13-1372, the following documents become public record: the complaint, the response by the respondent, and the notice of dismissal.
 - (ii) After a finding of probable cause, except for a technical violation pursuant to Section 8-13-1170 or 8-13-1372, the following documents become public record: the complaint, the response by the respondent, and the notice of hearing. If a hearing is held on the matter, the final order and all exhibits introduced at the hearing shall become public record upon issuance of the

final order by the commission. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. In the event a hearing is not held on a matter after a finding of probable cause, the final disposition of the matter becomes public record.

The respondent or his counsel, by written notice, may waive the confidentiality requirement. The commission shall not accept any partial waivers. The wilful release of confidential information is a misdemeanor, and a person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year.

DISCUSSION:

The Commission's jurisdiction is limited to the applicability of the Ethics Act. Based on the holdings expressed herein, the Commission hereby withdraws SEC AO92-130, SEC AO2000-006, and SEC AO2002-010. This Advisory Opinion does not affect the release of confidential information pursuant to Section 8-13-725 of the Ethics Act.

A careful review of Section 8-13-320(10)(g) reveals that this provision limits only what information the Commission itself may disclose and at what stage in the complaint process such disclosure may occur. The plain language of the statute does not implicate a private citizen's speech, but rather applies only to the Commission. For instance, Section 8-13-320(10)(g) permits criminal penalties to be imposed for the wilful release of "confidential information" during the complaint process. Section 8-13-100(7) of the Ethics Act defines "confidential information" as "information, whether transmitted orally or in writing, *which is obtained by reason of the public position or office held* and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge." (emphasis added). Accordingly, such penalties only attach when the release of the information is at the hands of a public servant, not by a private citizen.

Thus, the Commission hereby finds that Section 8-13-320(10)(g) does not implicate a private citizen's speech and, instead, only regulates what materials the Commission may publicly disclose throughout the complaint process and when such disclosures may occur.