

Law Recommendation # 23

- Law: Regulation 65-3 (B)(10)
- Summary of current statutory requirement: The Commission is prohibited from allowing public access to information contained in employment investigation files. However, the parties to the file have certain restricted access to the file contents, primarily for processing purposes. The limitation currently prevents the charging party from gaining access to the respondent's written 'position statement' which contains its defenses.
- Recommendation and Rationale for Recommendation: The Respondent's 'position statement' should be made available to the charging party so that the charging party can rebut the Respondent's defenses. Certain confidential information, if properly limited and designated as by the Respondent as confidential, may be precluded from disclosure to the charging party. The Agency's federal counterpart, the Equal Employment Opportunity Commission, made this practiced uniform nationwide in 2016.
- Law Wording 65-3. Investigation and Production of Evidence.
 - B. Production of Evidence.
 - (10) Confidentiality.
 - (a) Public Access to Commission Files or Information Gathered During an Investigation. As provided in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered during an investigation conducted under Section 1-13-90 of the Act, shall not be made public by the Commission, its officers or employees, unless and until that information is offered or received into evidence at a Commission hearing or court proceeding brought in accordance with the Act. In view of the prohibitions against making information public contained in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered by the Commission during investigations and internal memoranda assessing evidence, discussing complaints or recommending action on complaints shall not be deemed "public records" within the meaning of the Code of Laws of South Carolina Section 30-4-20 . The provisions of this Subsection apply whether the Commission's investigative file is open for an ongoing investigation or closed after a matter is completely concluded.
 - (b) Public Access to Final Opinions and Orders and Determinations. The public shall have access to the Commission's final opinion and order concerning a complaint under Section 1-13-90(c) of the Act or the Commission's determination on whether to dismiss a complaint or sue in the state circuit court under Section 1-13-90(d) of the Act.
 - (c) Commission Requests for Information from Investigators. If the Commission requires reports on investigations or on the progress of investigations, the investigator's report shall be given to the Commission while the Commission sits in executive session with member of the public excluded.
 - (d) Access to Information by Complainant and Respondent.
 - (i) Information Provided by the Parties Themselves. The complainant may at all times have access to any information which the complainant has furnished the Commission. The respondent may at all times have access to any information which the respondent has

furnished the Commission. During the investigation of the charge of discrimination, both parties may have access to the charge filed by the complainant, and the Respondent's initial response to the charge, or position statement, and non-confidential attachments. Confidential attachment should be labeled by the Respondent prior to being sent to the Commission. ~~However,~~ Neither the complainant nor the respondent shall have other information furnished by the other party, except that this Subsection does not apply to disclosure to the parties or their attorneys where the disclosure is limited to matters necessary for determining appropriate relief and/or negotiating settlements or making conciliation offers and except that this Subsection does not apply to the complainant's or respondent's access to Commission files after a complaint against the respondent has been served as provided in subitem (ii), following.

(ii) Information Available to the Parties in a Proceeding. If an action is brought against a respondent in accordance with the Act, either before the Commission pursuant to Section 1-13-90(c) of the Act or in a court of competent jurisdiction pursuant to Sections 1-13-90(c) and (d) of the Act, the complainant and respondent shall from the time the complaint is served be granted access to the investigative file of the Commission which shall include access to statements, affidavits or depositions of the complainant and witnesses, whether or not the complainant and the witnesses are employees of the respondent at the time the request for access is made. The complainant and respondent shall also have access to all other facts and data gathered by the Commission during its investigation, provided however that neither shall have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and the like.

(iii) Copy of the Complaint. A copy of the complaint will be served in all cases upon the respondent unless a complaint received pursuant to a federal contract expressly requires that the original complaint not be served. In the event that a copy of the complaint is not provided, the respondent shall be served with a notice of the complaint within ten (10) days of receipt. The notice of complaint shall include the place, circumstances and identity of the person filing the complaint, a description of the violations of the Act alleged to have been committed by the respondent and the date of the alleged violation.

(e) Reports and Compilations. The Commission may publish abstracts of data derived from its closed investigative files in a form which does not reveal the identity of the parties, trade secrets, financial information or competitive commercial information or processes.

(f) Sharing Information Between Agencies. The Commission shall not provide information to any state or federal agency which does not have written regulations

providing essentially the same protection against unauthorized disclosure as provided in these regulations.

- Other Agencies Impacted: None.

Law Recommendation # 24

- Law: Regulation 65-223
- Summary of current statutory requirement: The Regulation explains the procedures for investigating a charge filed under the Fair Housing Law.
- Recommendation and Rationale for Recommendation: The regulation should include provisions that allow for closure of an investigation when a complainant wants to withdraw the matter, or when complainant is offered full relief under the law and fails to accept it.
- Law Wording: 65-223 Investigation Procedures.
D. Completion of investigation.
(1) At any time, the aggrieved person may seek to withdraw the complaint from the agency. The request must be in writing from the aggrieved party, or aggrieved party's representative, stating the reasons withdrawal. The request is subject to approval by the Commission. Such withdrawal shall be without prejudice to the rights of the aggrieved party. A withdrawn complaint may be re-filed, provided such filing occurs within one hundred eighty (180) days of the discriminatory act originally alleged.
(2) If the respondent offers full relief to the aggrieved party, and the relief is rejected, the Commission may dismiss the matter.
(3) If the aggrieved party fails to provide information necessary for the proper filing or processing of a complaint, fails or refuses to appear or to be available for scheduled interviews or conferences with Commission investigators, or otherwise refuses to cooperate with the Commission to the extent that the Commission is unable to resolve the complaint, then the Commission, after due written notice to the aggrieved party and fifteen (15) days in which to respond, may dismiss the complaint.
(4) All other The investigations will remain open until the reasonable cause determination is made or a conciliation agreement is executed and approved. Unless it is impracticable to do so, the Commission will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Commission reactivates the complaint, within 100 days after service of the notice of reactivation). If the Commission is unable to complete the investigation within the 100 day period, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.
- Other Agencies Impacted: None.