

**SOUTH CAROLINA  
ASSOCIATION OF COUNTIES  
FREEDOM OF INFORMATION ACT  
HANDBOOK  
FOR COUNTY GOVERNMENT  
2008 SUPPLEMENT**

**File this supplement with the Freedom  
of Information Handbook, 2006 Edition**

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## PREFACE

Store this supplement with the *Freedom of Information Handbook, 2006 Edition*. Anytime the *Freedom of Information Handbook, 2006 Edition* is consulted, this volume must be checked for amendments to the statutes, case law and Attorney General opinions interpreting the statutes.

The *Freedom of Information Handbook, 2006 Edition*, includes practice pointers, case notes, and summaries of Attorney General's opinions in addition to those included here. This publication is not intended to be the final word on FOIA. Because the Freedom of Information Act continues to evolve through legislative amendment and case law, it is important to consult your county attorney when you have a question regarding the application of the law to a particular set of facts.

This publication is intended to give you a readily available reference book with which to begin your research. Should you need additional assistance, the South Carolina Association of Counties' staff is available to help all county officials and employees. Whether your question involves a matter requiring the interpretation of law, research, or proposed legislation, the Association's staff is available to serve you. Please call the Association at 1-800-922-6081, or email us at: [scac@scac.state.sc.us](mailto:scac@scac.state.sc.us).

**P. 9            §30-4-20. Definitions.**

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**ATTORNEY GENERAL’S OPINIONS**

Five members of a school board, which constituted a quorum, held a telephone conference to discuss the proposed school budget that would be voted on at the upcoming board meeting. The telephone “conference” would constitute a “meeting” of a “public body” for purposes of FOIA. The school board would constitute a public body pursuant to §30-4-20(a). The meeting requirement is met because there is a convening of a quorum of the constituent membership of the public body to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. The holding of such telephonic meetings without the requisite notice and access of the public to the discussions is in violation of FOIA. (2006 WL 2593081 (S.C.A.G.)).

The Commission on Higher Education (CHE) is a public body within the definition provided in §30-4-20(a). Records and documents submitted to CHE as part of an application for a license by a proprietary school are public records pursuant to §30-4-20(C) subject to disclosure unless exempt under a provision of FOIA. (2007 WL 1302771 (S.C.A.G.)).

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**P. 18            §30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; production of public records in a particular manner and timeframe.**

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**PRACTICE POINTERS**

Many public records contain personal identifying information such as social security numbers. Social security numbers are also routinely collected as a necessary part of the daily function of some local governmental entities. Act 190 of 2008, which deals with identity theft and fraud protection laws, requires agencies that collect social security numbers to segregate those social security numbers so that they may be easily redacted pursuant to a public records request in compliance with §30-2-310(A)(1)(b).

In addition, §30-2-330(A) of the Act prohibits the filing of documents to be recorded in the register of deed or clerks of court that include personal identifying information such as a social security number or driver’s license, unless such information is required by law or court order. Pursuant to §30-2-330(B), a consumer or their attorney may request that personal identifying

information be redacted from an image or copy of an official record of a public document, such as a mortgage, on the register of deeds or clerk of court's public website. The request must be made in writing and must specify the identification page number of the documents that contains the personal identifying information. There is some question as to whether the information redaction process provided in §30-2-330(B) applies only to electronic copies or to physical copies in light of §30-1-30, which prohibits the alteration of public records.

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### CASE NOTES

Although fees may not be charged for examination and review to determine if the documents are subject to disclosure, §30-4-40 does not require that records be sent to a person for inspection, and the statute does not mandate special consideration for inmates. *Furtick v. S.C. Dept. of Corrections*, 2007 WL 2178417.

While a county's annual financial report is a public record under §30-4-30(a), a county administrator cannot be compelled to produce the report in a particular time frame or manner for a council member. The manner in which the report is provided is within the administrator's discretion. *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580.

A county may restrict further commercial distribution of public documents pursuant to a copyright by requiring anyone requesting the copyrighted documents to sign a licensing agreement acknowledging the copyright on the information and restricting any further commercial use without prior written consent from the county. *Seago v. Horry County*, 378 S.C. 414, 663 S.E.2d 38.

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### ATTORNEY GENERAL'S OPINIONS

Even though the SC Retirement System's regulations state that all records of members of the retirement system are classified as confidential and shall not be disclosed to third parties, SC Vocational Rehabilitation Department cannot use this as a basis to deny a request to disclose the name of employees that participate in the TERI program and the date they began participation. Where a regulation is in contravention to the disclosure requirements under FOIA, the requirements of FOIA must prevail. (2007 WL 419417 (S.C.A.G.)).

The City Council questioned whether tapes of their meetings could be destroyed as had been the practice. The public policy of this State is to preserve, rather than destroy public records. The Public Records Act governs the custody and preservation of public records. The Public Records Act defines a "public record" by referencing the definition of a public record found in §30-4-20(C). Because the city creates and retains possession of such tapes, they meet the definition of a public record under the Public Records Act, and the city must comply with the Public Records Act in its handling of the tapes of its meetings. (2007 WL 1651338 (S.C.A.G.)).

Documents related to an out of court settlement of a lawsuit with a confidentiality clause

involving a school district are public records subject to disclosure under FOIA where public funds were expended in the lawsuit. Despite the confidentiality clause, the school district must disclose information not exempt under §30-4-40. (2007 WL 4284631 (S.C.A.G))

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**P. 33      §30-4-40. Matters exempt from disclosure.**

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**PRACTICE POINTERS**

Act 202 of 2008 requires SLED to maintain a list of all concealed weapons permit holders, and they may only release the list or verify a permit holder's status pursuant to a request by a law enforcement agency or a subpoena or court order. Any person currently in possession of a list of permit holders provided by SLED must destroy the list. Section 23-31-215(T) of the Act requires SLED to publish an annual report of the following information on permit holders with a breakdown by county: (1) the number of permits; (2) the number of permits that were issued; (3) the number of permit applications that were denied; (4) the number of permit applications that were renewed; (5) the number of permit renewals that were denied; (6) the number of permits that were suspended or revoked; and (6) the name, address, and county or person whose permit was revoked, including the reason for the revocation under §23-31-215(J)(1) of the Act.

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**CASE NOTES**

The school district violated §30-4-40(a)(13) when the district only released material requested by the press on the two individuals considered by the district to be "finalist" for the superintendent position instead of the five semi-finalists out of which the two finalists were selected. The school district took the position that its obligation under the law was to disclose "only materials relating to the two finalists." However, the statutory language requiring disclosure of materials relating to "not fewer than the final three applicants" requires the public body to disclose the final pool of applicants comprised of at least three people. Application of the statute in this case requires disclosure be limited to the final group numbering more than two (i.e., the five semi-finalists, not the entire group of thirty applicants). *Spartanburg Herald-Journal v. Spartanburg County School District No. 7*, 2007 WL 2034821.

The police department must release tapes of emergency calls related to a shooting incident, even though the tapes would be used at the criminal trial and the release of the tapes to the newspaper might cause so much pretrial publicity that the trial might have to be moved to a different venue. The financial cost of a venue change is not the type of harm that the FOIA exemption is intended to prevent in protecting records of law enforcement and public safety agencies compiled

in the process of detecting and investigating crime. It is intended to prevent harms such as those caused by release of a crime suspect's name before arrest, the location of an upcoming sting operation, and other sensitive law enforcement information. *The Post & Courier v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 ( 2005).

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**ATTORNEY GENERAL'S OPINIONS**

A sheriff's office is required under FOIA to disclose internal investigation reports that contain information as to the performance of public duties by sheriff's office employees. FOIA does not provide for a right of confidentiality, despite the sheriff's concern about his office's responsibility and liability in protecting his employee's rights. Regardless of the potential for lawsuits as a result of the disclosure of such information, a sheriff's office must comply with the disclosure requirements. (2006 WL 1574915 (S.C.A.G.)).

A public body cannot use the trade secrets disclosure exemption found in §30-4-40(a)(1) to preclude revealing the radiation monitor locations as well as the radiation levels at each specific location for Chem-Nuclear. If a public record contains both exempt and nonexempt material, the public body shall separate the exempt and nonexempt material and make the nonexempt material available. Chem-Nuclear' quarterly reports from these monitoring locations, which comes in the form of raw data that the general public would not be able to interpret, must be disclosed to the public in a form that is comprehensible. (2007 WL 4284629 (S.C.A.G.)).

Documents related to an out of court settlement of a lawsuit with a confidentiality clause involving a school district are considered public records subject to disclosure under FOIA where public funds were expended in the lawsuit. A court shall not approve sealing a settlement agreement which involves a public body or institution. (2007 WL 4284631 (S.C.A.G.)).

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**P. 45      §30-4-50. Certain matters declared public information; use of information for commercial solicitation is prohibited.**

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**ATTORNEY GENERAL'S OPINIONS**

A police department should honor a request to provide the names and badge numbers of all officers who work openly with the public. Such a request is consistent with the provisions of §30-4-50(A)(1) that the names, sex, race, title, and dates of employment of all employees and officers of public bodies are public information subject to disclosure unless another provision of law would restrict access to that information in a particular situation. (2008 WL 1960277 (S.C.A.G.)).

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**P. 48      §30-4-60. Meetings of public bodies shall be open.**

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**CASE NOTES**

A balancing test must be used to determine whether a public body's meeting place complies with the provisions of §30-4-15, which require that meetings be held with minimum cost or delay to the public. In this case, the balancing test is "the interests of the public in having a reasonable opportunity to attend a board workshop versus the board's need to conduct a workshop at a site beyond the county boundaries." The town did not violate FOIA by holding its workshop at Dataw Island and the town's interest in increased attention and focus of the council members by having the workshop at a remote location outweighed the small cost and delay to the public in attending the workshop at that location. *Weidmann v. Town of Hilton Head Island*, 344 S.C. 233, 542 S.E. 2d 752 (Ct. App. 2001).

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**ATTORNEY GENERAL'S OPINIONS**

Public body meetings do not have to be held in a specific location and can be conducted via telephone as long as the other requirements of FOIA are met, unless the statutes that govern the public body require the meetings to be held at a specific location or in a particular manner. Section 7-17-220 calls for the SC Election Commission to meet at the office of the Commission, unless otherwise provided in §7-3-10(C). Section 7-3-10(C) requires the Commission to also meet at its offices or at a more convenient location. These provisions do not contemplate a meeting of the Commission via telephone conference call. (2007 WL 1651329 (S.C.A.G.)).

A meeting of a transition committee created by the General Assembly to consolidate the school districts of a county does not constitute a meeting of the school district, even though four of the members on the committee are members of the board of one of the school districts. However, a court would more than likely conclude that the committee is a public body under §30-4-60, requiring the meetings to be open to the public. (2008 WL 2324810 (S.C.A.G.)).

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**P.57      §30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.**

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**ATTORNEY GENERAL'S OPINIONS**

The circulation of a letter of recommendation to each member of a congressional district to appoint an individual from that district to the Department of Transportation Commission without the congressional district meeting and voting on the appointment violates §30-4-70. The circulation of a letter at an open public meeting where each member of the congressional district signs his recommendation does not violate FOIA, as long as the vote is taken at the meeting. (2007 WL 1031442 (S.C.A.G.)).

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**P. 63      §30-4-80. Notice of meetings of public bodies.**

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**ATTORNEY GENERAL’S OPINIONS**

The Majority Caucus of the SC House of Representatives is a public body pursuant to FOIA and therefore, planned meetings are subject to advance notice and posting. FOIA “contains no “de minimis” threshold that an entity must meet in order to constitute a “public body.” Even though the support by public funds received by the Caucus may be characterized as indirect, or even insignificant, it is, nevertheless, a “public body” for purposes of FOIA. (2006 WL 1574910 (S.C.A.G.)).

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**P. 64      §30-4-90. Minutes of meetings of public bodies.**

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**CASE NOTES**

When interpreting a county ordinance, the courts may look to the minutes of the council as evidence of legislative intent. Eagle Container Co., LLC v. County of Newberry. (2008 WL 4004110).

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**ATTORNEY GENERAL’S OPINIONS**

The Board of Probation, Parole and Pardon Services’ refusal to disclose individual votes of board members based on policy rather than any statutory provision does not comply with FOIA. The votes of individual members must be disclosed. (2001 WL 790250 (S.C.A.G.)).

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**P. 65      §30-4-100. Injunctive relief; costs and attorney's fees.**

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**CASE NOTES**

There is no good faith exception for an award of attorney's fees under FOIA. The Spartanburg Herald-Journal v. Spartanburg County School District No. 7., 2007 WL 2034821.

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**APPENDIX**

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**P. 71      §6-1-80. Budget adoption.**

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**ATTORNEY GENERAL'S OPINIONS**

A school board is not required to notify the public that a proposed budget for the school board would result in tax increases if it were adopted. Section 6-1-80 requires a public hearing prior to the adoption of the school district's budget, as well as notice of such a hearing in a newspaper of general circulation at least fifteen days prior to the hearing. Additionally, the notice must contain information regarding current year revenues and millage rates verses budgeted revenues and millage rates. The district published the notice in The Post and Courier on June 13, 2005, advertising a public hearing to be held on June 28, 2005. The notice appears on its face to meet all of the requirements for notice set forth in §6-1-80. (2006 WL 1877118 (S.C.A.G.)).



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