

# **FREEDOM OF INFORMATION HANDBOOK**

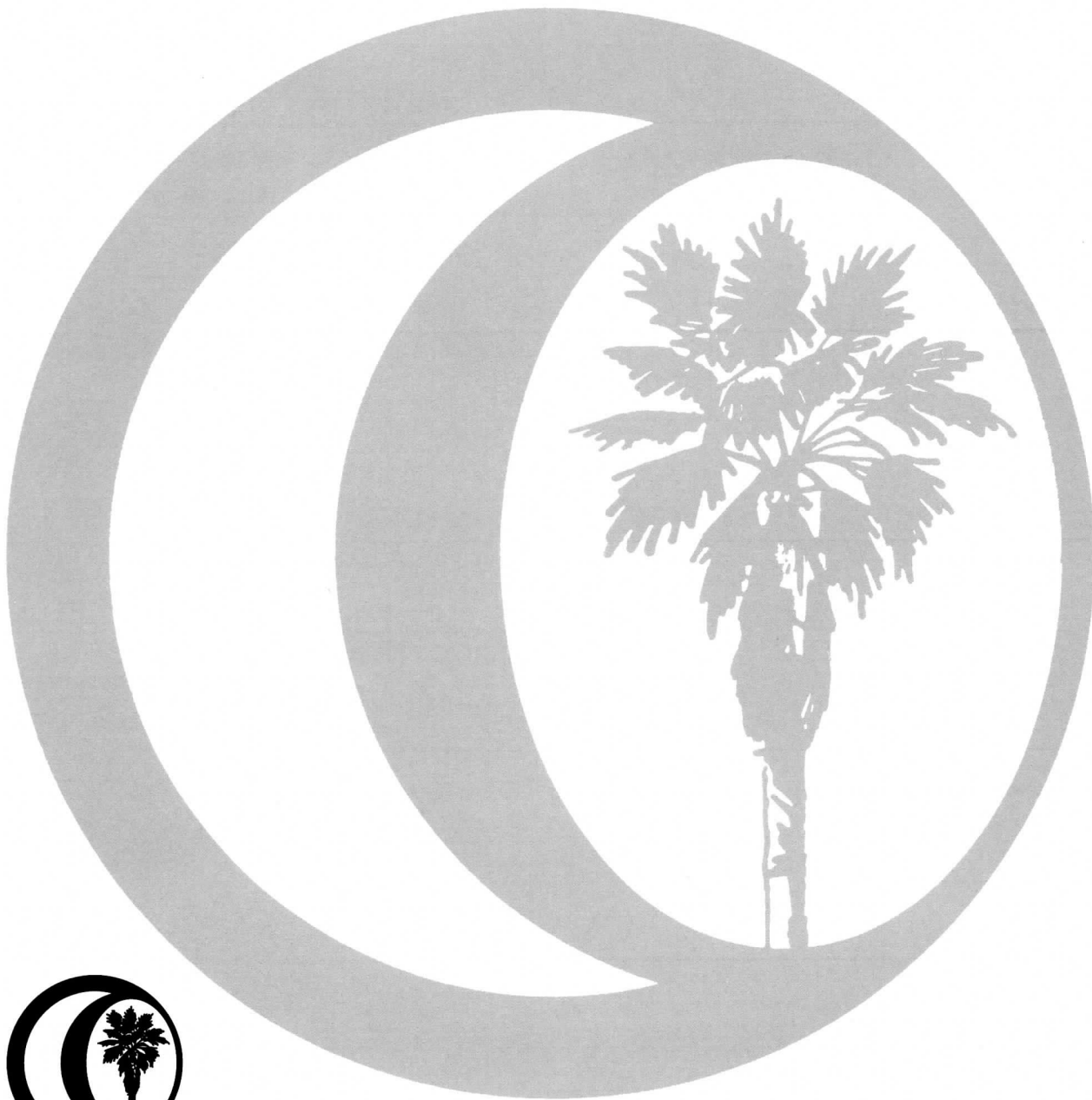
**FOR  
COUNTY GOVERNMENT**

**2018 Edition**

**Published by**



**SOUTH CAROLINA  
ASSOCIATION OF COUNTIES**



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ASSOCIATION OF COUNTIES**

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April 2018

There were a number of professionals with expertise in this area who gave generously of their time and insights to provide input and review of this document. Specifically, we wish to thank: Jay Bender, S.C. Press Association Legal Counsel; Ginny Dupont, Spartanburg County Attorney; Jeanne Lisowski, General Counsel, SC Vocational Rehabilitation Dept.; Dr. Tiffany Richardson, General Counsel and Director of Policy and Legal Services, S.C. School Boards Association; and Adam Whitsett, General Counsel, SLED.

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## PREFACE

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This handbook contains the complete text of the South Carolina Freedom of Information Act, (FOIA), appearing at § 30-4-10, *et seq.*

This publication is not designed or intended to be the final word on FOIA. The statutes, practice pointers, case notes and summaries of Attorney General's opinions are not a complete source of the law. The Act continues to evolve through legislative amendment including substantial revisions in 1978, 1985, 1987, 1998, and 2017. We have included "editor's notes" after some Attorney General's Opinions and case notes. For these reasons, 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, obtaining information and data from other counties, or proposed legislation, the Association's staff is available to serve you. Please call, write or e-mail the Association at the numbers and addresses included in this handbook.

## PRACTICE POINTERS

In addition to this practice pointer, a practice pointer appears after each statute. The practice pointers are comments written to provide guidance about some of the basic rules concerning FOIA and address some of the most commonly asked questions about the application of FOIA. The practice pointers are written without resort to legalisms and err on the side of disclosure in accordance with the recommendations from the Attorney General's Office stating:

When in doubt, disclose.  
When in doubt, post the meeting.  
When in doubt, open the meeting.  
When in doubt, release the document.<sup>1</sup>

However, there are exceptions to FOIA in other parts of the South Carolina law. Other laws may embellish or supersede FOIA in particular situations. For example, while council meetings are subject to FOIA in general, there is a special statute applicable to council meetings found at § 4-9-130. And, when adopting the county budget, § 6-1-80 supersedes FOIA concerning the public notice requirements. These statutes are reprinted in the Appendix.

The Federal Privacy Act of 1974, 5 U.S.C. § 552a (note)<sup>2</sup>, provides that a local, state, or federal government agency cannot require an individual to submit a social security number unless (1) the records system for which the social security number is being solicited antedated 1975 or (2) the entity has received specific permission from Congress to require submission of a social security number. If neither of those two conditions is satisfied, then the entity may still request that an individual submit his or her social security number voluntarily. In either case, a requirement of or request for the number, the agency must fully disclose what use will be made of the number.

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<sup>1</sup> Letter from the Honorable Charles W. Condon, South Carolina Attorney General, to the S.C. Press Association, undated.

<sup>2</sup> This provision of the Privacy Act was never codified but is instead set out as a historical note to 5 U.S.C. § 552a (West 1996). The full text states the following:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number. (2) The provisions of paragraph (1) of this subsection shall not apply with respect to (A) any disclosure which is required by Federal statute, or (B) the disclosure of a social security number to any Federal, State or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. (b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.



Notwithstanding the Federal Privacy Act, federal, state and local government agencies may require disclosure of a social security number for certain purposes. For example, government agencies may lawfully require the furnishing of a social security number: (1) when required by federal statute; (2) if the individual's disclosure of the number was required under statute or regulation adopted on or before January 1, 1975, provided that the agency maintained a system of records in existence and operating before January 1, 1975; (3) to the extent that social security numbers are used in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within the agency's jurisdiction<sup>3</sup>; (4) in connection with the issuance of birth certificates and in the enforcement of child support orders<sup>4</sup>; and (5) in the administration of the Food Stamp Act and the Federal Crop Insurance Act.<sup>5</sup>

Although the Federal Privacy Act did not restrict an agency's disclosure of an individual's social security number, 1990 amendments to the Social Security Act now make an individual's social security number confidential when the number is obtained by an agency pursuant to any provision of law enacted after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(ii), (viii) (I).

## **EXCEPTIONS FROM FOIA**

Section 30-4-40 contains a list of records which are not required to be disclosed pursuant to an FOIA request. In this statute is a provision stating that records specifically made exempt from disclosure by statute or law are not subject to disclosure under FOIA. If a statute or law outside of FOIA states that a particular record is confidential or subject to disclosure only under specified circumstances, generally the record should not be provided pursuant to a FOIA request. Some of these statutes require disclosure only under certain conditions and some of the statutes prohibit disclosure to the public entirely.

Some of the statutes making certain records confidential are annotated under § 30-4-40. We have also included a list of other statutes and regulations that either make certain records confidential or specifically exempt them from FOIA. Although this list is exhaustive, any questions about your particular matter should be directed to your attorney. All references here are to the South Carolina Code unless otherwise specifically stated. Additionally, be aware that there are exceptions and exemptions from FOIA contained in federal law. For example, a military service member's Certificate of Release and Discharge from Active Duty (Form DD214), frequently found in employee personnel files, is exempt from disclosure<sup>1</sup>, as are records contained by the National Crime Information Center.<sup>2</sup>

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<sup>3</sup> 42 U.S.C. § 405(c)(2)(C)(i) & (iv).

<sup>4</sup> 42 U.S.C. § 405(c)(2)(C)(iii).

<sup>5</sup> Id.

<sup>1</sup> 32 C.F.R. §45.3(e). See Informal Opinion of the S.C. Attorney General dated May 16, 2002.

<sup>2</sup> Vasquez v. United States Dept. of Justice, 887 F.Supp. 2d114 (D.D.C. 2012).

## BALANCING FOIA AND THE PUBLIC RECORDS LAW

The Public Records Act, § 30-1-10, *et seq.*, imposes specific duties on public officials who create, use, or manage public documents. Section 30-1-70 requires the legal custodian of public records to “protect them against deterioration, mutilation, theft, loss or destruction.” This statute is intended to preserve records which have historical value, are important for the provision of services, protect the interests of the public, or have commercial importance as records. Thus, only copies of records are required to be provided under FOIA. Public bodies may elect to adopt an office policy designed to preserve public records from loss and destruction. The policy may require a custodian of records to be present when public records are being inspected pursuant to a FOIA request.

### RESPONDING TO A FOIA REQUEST

Any written or verbal request for documents, records, or information coming into a public body’s office should be considered a FOIA request. Here are some simple tips on how to structure office operations in anticipation of a request under FOIA.

**1. Develop a written office policy to address how the office responds to a FOIA request.** By developing specific office policies which anticipate how the office will respond to a FOIA request, one can assure compliance with the Act.

**2. Designate one person.** Designate one person in the office to receive, log in, and process written FOIA requests and to respond to requests made “in-person.” This may be the same person, the office receptionist and /or a public information officer. Whoever is authorized to interact with the public and respond to written and verbal FOIA requests should be designated and receive training.

**3. Provide training.** Provide training to anyone authorized to respond to a request for records. The office receptionist should know how to respond to a request made by someone appearing in person. Office personnel should know to whom to direct requests for records in the event they receive a FOIA request. The office should anticipate requests for records made in person, what records are required to be immediately available without a written request, and how to respond to the in-person request.

**4. Include a written policy specifying costs for searching for, and making copies of records.** FOIA allows recovery of costs “not to exceed the actual cost of the search, retrieval, and redaction of records.” The costs must be uniform and may not exceed the prevailing commercial rate for the producing of copies (think Kinko’s rates for example).

The policy may allow waiver of costs under specified circumstances. FOIA provides that costs may be waived if it is determined that waiver or reduction of costs is in the public interest because the information is considered as primarily benefitting the general public. Another reason to waive costs arises when the number of copies is small compared to the expense of preparing a receipt and accounting for a small amount of money coming into the office.

Fees may not be charged for examination and review of documents to determine if they are subject to disclosure. Public bodies shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of records, has the necessary skill

and training to perform the request. A deposit not to exceed 25 percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records. The full amount of the total cost must be paid at the time of the production of the request. There should be written guidance for determining when a deposit is required.

The existence of a written policy on costs charged pursuant to FOIA and staff training is fundamental to FOIA compliance. These issues are discussed in more detail under § 30-4-30 dealing with records, fees, and costs.

## WRITTEN AND VERBAL REQUESTS

**5. When a written request is received, write the date of receipt down.** Write the date a FOIA request is received on the letter, office tickler, or calendar. This can also be accomplished with a date stamp or setting up an electronic reminder. The date of receipt will be used to establish the date a response is due.

**6. For purposes of this discussion, these general concepts apply regardless of whether or not you are dealing with 10-day response time or a 20-day response time based on the age of the documents: Count the number of business days from the date the FOIA request is received and write the date down.** Record the date on which the business days expires on the letter, office tickler or calendar. The business days (based on the age of the requested documents) from the date a written FOIA request is received is the response date. The response date is the date when a response must be given in writing to the requestor. The term “business days” excludes Saturdays, Sundays, and legal public holidays occurring between the date the FOIA request is received and the date the response is due.

**7. Determine if the request is for specific documents, a request to inspect documents or both.** Some requests simply ask for copies of readily available public documents. Other requests may ask to “inspect” records. A request to inspect records is asking for an opportunity to look at a particular group of records in the office.

**8. Determine if there will be fees and costs.** A fee for the actual cost of searching for and making copies of public records may be charged. Costs should be determined using some objective measure. If a request entails research to determine which records apply to the request, charges for staff time devoted to research may be charged. Fees may not be charged for examination and review to determine if the documents sought are subject to disclosure. The specific provision applicable to fees and costs is developed more fully under the practice pointer appearing after § 30-4-30.

**9. Write back before the end of the response period.** A letter sent before the end of the response period may be necessary to clarify a vague request, to advise of fees, costs or deposits, or confirm an agreement to extend the response period in order to search for records and determine a record’s availability under the Act. This letter should (a) acknowledge receipt of the FOIA request; (b) confirm your understanding about the specific records sought or request clarification of vague requests; (c) provide information about fees, costs, and a deposit, if any; and (d) give a date, time, and place where the records will be made available for inspection when an inspection of the records is requested.

**10. FOIA requires a written response within the statutory response time.** The Act requires a written response within a specific number of business days (depending on the age of the documents or information being requested) from the date of receipt of a verbal or written FOIA request. This will be referred to as the response letter. The response letter is deemed, under the Act, to be a determination about the release of records or the right to inspect them and the letter must state the reasons for the determination. The response letter is, according to the Act, the final opinion of the public body regarding the public availability of the requested records. If the response letter is not mailed or personally delivered to the person making the FOIA request, the request for records is considered approved by operation of the statute.

The response letter is a significant legal statement by the office because it is considered the final opinion of the office about the public availability of requested records. However, it is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction based on an applicable exemption. Also, FOIA does not prohibit asking for clarification of vague requests or requesting an extension of time in which to provide the response letter. Thus, if an attorney's opinion is needed on an issue related to the availability of records, ask for an extension of time in which to respond and document the agreement by letter. If any agreement is made that varies the requirements of the Act, it must be made in writing with a copy delivered to the requestor acknowledging the agreement. Provide a copy of this letter to the attorney preparing an opinion, if any.

Any agreement altering the time line required by FOIA should be sent to the requestor along with a restatement of any discussions about fees, costs, deposits, if any, and the date, time and place for inspection of records. Remember, that § 30-4-30(C) provides that the various response, determination, and production deadlines are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld. The final determination letter must be mailed or personally delivered on the date agreed to or within the statutory response time.

**11. FOIA requires a date certain for the documents to be produced or made available for inspection.** For documents that are two years old or less, the Act requires the documents to be produced or made available for inspection 30 calendar days from the response date. For documents older than two years, the Act requires the documents to be produced or made available for inspection 35 calendar days from the response date. Where a deposit has been requested, it is important to remember that these dates begin to run on the date the deposit is received. Once the deposit is received and documents are produced, a public does not have to release the documents until they receive the full amount of the total cost.

## **“IN PERSON” REQUESTS**

**12. Anyone may appear in person, look at, and receive copies of certain records.** Meeting minutes for the last 6 months; law enforcement records for the last 14 days; and jail, detention center and prison records identifying confined persons for the last 3 months must be available for public viewing and copying by any person appearing in person. A written request is not required nor should one be requested. These particular records for the periods specified should be available for public viewing during the public body's hours of operations. For some offices this will be between 8:30 a.m. and 5:00 p.m. For other offices this may mean 24 hours a day.

Section 30-4-30(d) requires the following documents be made available on demand:

- (1) minutes of the meetings of the public body for the preceding 6 months;
- (2) all reports identified in § 30-4-50(A)(8) for at least the fourteen-day period before the current day. The “14 day reports” in § 30-4-50(A)(8) are “reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. When a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.”
- (3) documents identifying persons confined in any jail, detention center, or prison for the preceding 3 months.
- (4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.

## **CONCLUSION**

**13. Anticipate FOIA requests before they arrive.** Anticipating a response to a FOIA request before it is made, developing written office procedures and implementing staff training will ease the process and ensure compliance with the law.



**FREEDOM OF INFORMATION ACT**  
**S.C. Code § 30-4-10, *et seq.***

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**§ 30-4-10. Short title.**

This chapter shall be known and cited as the “Freedom of Information Act.”

HISTORY: 1978 Act No. 593, § 1.

**§ 30-4-15. Findings and purpose.**

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

HISTORY: 1987 Act No. 118, § 1.

**PRACTICE POINTERS**

The statement of “findings and purpose” indicates the far reaching scope of the Act. In cases where a Court is asked to construe the statute, note that the statute requires the Court to construe FOIA to require disclosure if possible. Therefore, one should assume that the Court will require disclosure unless the information sought is specifically made exempt from disclosure (confidential) by FOIA or another statute or law.

**CASE NOTES**

Meetings may be conducted outside of municipal boundaries. The Court of Appeals in construing the “minimal cost or delay” provision in § 30-4-15 adopted a balancing test weighing the interests of the public against the government’s need to conduct a meeting at a distant site. The Supreme Court affirmed the use of a balancing test but reversed and remanded the case for further findings. To determine if a meeting complies with the “minimum cost or delay” requirements in § 30-4-15, the interests of the municipality in conducting a meeting outside the municipal limits should be weighed against the cost or delay to the public. *Wiedemann v. Town of Hilton Head*, 326 S.C. 573, 486 S.E. 2d 263 (Ct. App. 1997); affirmed in part but reversed with directions to take additional evidence to determine if the test was met 330 S.C. 532, 500 S.E.2d 783 (1998).

ATTORNEY GENERAL'S OPINIONS

Out-of-court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public. Op. S.C.Att’y Gen., 1988 WL 383515 (April 11,1988). [*Ed. Note: See Rule 41.1, South Carolina Rules of Civil Procedure.*]

An advisory committee whose assigned task is information-gathering or advisory functions should not meet in an executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. Op. S.C. Att’y Gen., 1988 WL 383514 (April 11, 1988).

A public body is precluded from taking formal action or a vote except in a public session. Because the distinction between purely procedural matters and “formal action” is often not clear, a public rather than secret vote should be taken if any doubt exists. Ad hoc committees or task forces appointed by the Mayor and City Council for information-gathering or advisory functions would be subject to the requirements of the Act. Op. S.C. Att’y Gen., 1988 WL 383489 (Jan. 14, 1988).

**§ 30-4-20. Definitions.**

(a) “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purposes of this chapter.

(b) “Person” includes any individual, corporation, partnership, firm, organization or association.

(c) “Public record” includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the



identity of the library patron checking out or requesting an item from the library or using other library services, except non-identifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act

(d) “Meeting” means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) “Quorum” unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

HISTORY: 1978 Act No. 593, § 3; 1985 Act. No. 108, § 3; 1987 Act. 118, § 2; 2002 Act No. 339, § 17, 2003 Act No. 86, § 7.

### PRACTICE POINTERS

**Public body:** The Act extends to any “public body.” A public body, subject to FOIA, is any entity that is supported in whole or in part by public funds or expends public funds. Study committees, ad hoc committees, advisory committees, and special committees by whatever name are covered by FOIA. The only statutory exception to the definition of a “public body” is given to committees of health care facilities for medical staff disciplinary proceedings and other actions specified under § 30-4-20(a).

The Attorney General’s Office stated, in a letter dated October 22, 2004 to the Executive Director of Common Cause of South Carolina, that “...the law is clear. Any entity which receives or has received taxpayer funds - federal, state or local - is subject to the Freedom of Information Act. This would include the Friends of the Hunley,” a non-profit group created by the Hunley Commission to raise funds for the Hunley project.

FOIA applies to all arms of local government. The local governmental entity and its constituent parts are covered by FOIA and should have written procedures to assist in compliance with FOIA. A procedure for receipt of FOIA requests, routing written FOIA requests to the proper person, and appropriate action when a requestor appears in person should be in writing and provided to the employees. This is discussed more fully in the section entitled “Responding to a FOIA Request” in the Preface.

## § 30-4-20

Procurement practices should be reviewed in light of the decision in *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C.156, 547 S.E.2d 862, (2001). The Court held that a review committee, composed of city staff members organized by the city manager to evaluate RFPs and advise the city manager in the award of a contract, was a public body (advisory committee) within the meaning of “public body” in FOIA. Thus, some procurement committees will be required to provide a FOIA notice of meetings and conform the meeting to the requirements of the FOIA.

**Public records:** The definition of “public record” in the Act is exceptionally broad. It is safe to assume that records, including computer data, prepared by or in the possession of the governmental entity are “public records” unless made confidential by § 30-4-20(c), § 30-4-40, or another statute or law. Section 30-4-20(c) makes certain records closed to the public. The records which are not made public records under FOIA include (1) income tax returns, (2) medical records, (3) hospital medical staff reports, (4) scholastic records, (5) adoption records, (6) records related to registration and circulation of library materials to the extent they identify library patrons, and (7) other records which by law are required to be closed to the public. Only these records are considered to be “exempt” under FOIA meaning they need not be disclosed.

Note that this definition specifically excludes all “[i]nformation relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices....” In fact, this information “is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.” Given the ever-increasing need for security in society today, great care should be given to the safeguarding of all security information utilized by public bodies, including cyber-security information.

In addition to the records made public under this section as “public records,” § 30-4-30 (d) (1), (2), (3) (4) makes the prior 6 months of meeting minutes, the prior 14 days of law enforcement reports and the prior 3 months of jail, detention center, prison records identifying confined persons, and all documents produce by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period, subject to public inspection on demand by a person appearing in person. “In-person” requests for inspection and copies of these designated records do not require a written request.

If a public record contains information that is not required to be disclosed under FOIA, like social security numbers, the Act requires that the record be provided after eliminating the non-public information. This may be done by striking out non-public information from a public record and providing the copy, as modified, to the requestor. There is no special method for modifying records to protect confidential information from disclosure. FOIA simply requires the public body “separate the exempt and nonexempt material and make the nonexempt material available.” § 30-4-40 (b).

**Meetings:** The definition of “meeting” is very broad under the Act and all types of meetings are covered including telephone conference calls and other meetings facilitated by electronic means. Under FOIA, a “meeting” occurs upon convening a quorum to discuss or act on matters over which the body has supervision, control, jurisdiction, or advisory power. A quorum means a simple majority of the body. When a meeting is convened, the public notice and open meeting requirements of the Act apply. Provisions relative to public notice of meetings are discussed in

§ 30-4-80; open meetings are discussed in § 30-4-60; and closed meetings are discussed in § 30-4-70. However, it should be noted that electronic communications, such as emails, cannot be used to circumvent FOIA.

One distinction between a meeting under FOIA and a social gathering is whether the members are gathered for the purpose of discussing public business and taking official action on matters within their supervision, control, jurisdiction, or advisory power. Thus, social gatherings are not meetings under FOIA. The fact that a quorum is present at a social gathering does not, without more, mean the gathering is a meeting under FOIA. However, § 30-4-70(b) provides that no “chance meeting” or “social gathering” may be used to circumvent the Act.

Every meeting of an advisory committee must be open to the public unless closed pursuant to § 30-4-70. Meeting minutes must be taken and made available upon request pursuant to § 30-4-90. The minutes must include a statement of the efforts to comply with the public notice requirements of the FOIA. Meeting minutes and other public records created and maintained by the advisory committee must be made available upon request pursuant to §§ 30-4-50 and 30-4-30. Written public notice and the agenda must be given for every meeting of an advisory committee as required by § 30-4-80. Executive Session may be conducted by advisory committees after a public vote to go into executive session and then only for a specifically stated purpose authorized by the FOIA. No “official action,” e.g., vote, may be taken in executive session. The only action which may be taken in executive session is to adjourn or return to the public session. Deciding on a course of action by polling the body is prohibited. Only after returning to the public session is it permissible to move to take a vote to commit to a course of action or take the course of action discussed in executive session.

If an advisory committee or any other public body votes to go into executive session, the presiding officer is required to publicly announce the executive session’s specific purpose. Reasons for going into closed sessions are listed at § 30-4-70 as follows: (1) discussion of employment matters; (2) discussion of contract negotiations and receipt of legal advice; (3) discussion of security matters; (4) discussion of crimes and offenses; and (5) discussion of matters concerning economic development.

**Quorum:** The term “quorum” is defined at § 30-4-20(e) to mean a simple majority. The definition of a quorum is used to determine when a meeting under FOIA has been convened. However, FOIA’s definition of a quorum does not necessarily apply to all situations. After convening a meeting by virtue of the presence of a simple majority, there will be instances where a majority is lost. For example, a member may become absent or disqualified from taking official action or voting under the Ethics Act, and his or her absence reduces the membership in attendance to less than a simple majority. In this situation, the body’s rules will probably control how to proceed in the absence of a majority. Once a quorum is lost because a member is disqualified or recuses himself, the public body cannot take any action other than to adjourn the meeting. FOIA appears to control only the definition of a quorum for purposes of convening the meeting, not taking action and voting. Disqualification on matters affecting an economic interest is treated in § 8-13-700(B) and § 4-9-180, reprinted in the Appendix. Our courts have provided guidance on how a public body determines when a quorum is lost in *Anderson County v. Preston*, 420 S.C. 546, 804 S.E.2d 282 (2017).

CASE NOTES

Autopsy reports are considered medical records under §30-4-20(c) and are therefore exempt from disclosure under the FOIA. Section 17-5-5(1) defines an autopsy as “the dissection of a dead body and the removal and examination of bone, tissue, organs, and foreign objects for the purpose of determining the cause of death and manner of death.” The objective of an autopsy is to determine the cause of death. However, an autopsy is performed by a medical doctor, is a thorough and invasive inquiry into the body of the decedent which reveals extensive medical information, such as the presence of any diseases or medications and any evidence of treatments received, regardless of whether that information pertained to the cause of death. *Perry v. Bullock*, 409 S.C. 137, 761 S.E.2d 251 (2014).

The FOIA did not unconstitutionally burden SCASA’s First Amendment speech and association rights even though FOIA implicates SCASA’s right to associate by interfering with its ability to deliberate internally and by removing any associational privacy. *Disabato v. S.C. Association of School Administrators*, 404 S.C. 433, 746 S.E.2d 329 (2013). [*Ed. Note: This case was remanded to the lower court, but was settled without any further legal proceedings.*]

Meetings may be conducted outside of municipal boundaries. The Court of Appeals in construing the “minimal cost or delay” provision in § 30-4-15 adopted a balancing test weighing the interests of the public against the government’s need to conduct a meeting at a distant site. The Supreme Court affirmed the use of a balancing test but reversed and remanded the case for further findings. To determine if a meeting complies with the “minimum cost or delay” requirements in § 30-4-15, the interests of the municipality in conducting a meeting outside the municipal limits should be weighed against the cost or delay to the public. *Wiedemann v. Town of Hilton Head*, 326 S.C.573, 486 S.E. 2d 263 (Ct. App. 1997); affirmed in part but reversed with directions to take additional evidence to determine if the test was met. 330 S.C. 532, 500 S.E.2d 783 (1998).

The Act’s provision permitting public body to hold closed meeting to discuss employment, demotion, or discipline of an employee does not exempt internal investigation report of a law enforcement agency from disclosure; the report is public record and question of its exemption must be resolved by reference to § 30-4-40. *City of Columbia v. ACLU*, 323 S.C. 384, 475 S.E. 2d 747 (1996).

In an action seeking the review of DSS files pursuant to FOIA, the Court of Appeals affirmed the trial court’s denial of the appellants’ request to review the files where they contained at least some materials exempt from the Act’s disclosure requirements and the record failed to show that the trial court was asked to review the DSS file and separate exempt and nonexempt material; however, appellants were not precluded from reappearing before the trial court and requesting that it conduct a review to separate the material based on its exempt status. *Beattie v. Aiken County DSS*, 319 S.C. 449, 462 S.E. 2d 276 (1995).

ATTORNEY GENERAL’S OPINIONS

A toxicology report, similar to an autopsy, is a diagnostic test yielding medical information, we believe, although not free from doubt, that a court would find such a report is a medical record and therefore not a public record under Section 30-4-20(c) of the Code. The purpose of the report is to

inform the reader “of facts concerning the diagnosis of poisons and their effect on an individual.” We believe a toxicology report can be accurately described as a presentation or description of facts concerning the diagnosis of poisons and their effect on an individual. Op. S.C. Att’y Gen., 2016 WL 1167292 (February 24, 2016).

Two city council members who are friends and frequently go to lunch and on day trips are appointed to a standing committee that is composed of three council members. Where there is no discussion of or action on a matter which the committee would have “supervision, control, jurisdiction or advisory power,” there would be no meeting. Based on § 30-4-20(d), a court will likely determine that FOIA would not apply to socializing where no business matters are discussed or acted upon. However, a strict adherence to no business being discussed must be followed for FOIA not to apply. Op. S.C. Att’y Gen., 2014 WL 3965780 (Aug. 5, 2014).

The Gaffney Board of Public Works donated funds to Limestone’s College’s capital campaign. Although Limestone College is a private nonprofit corporation, because they received funds from a public body, they are considered a public body under FOIA. Op. S.C. Att’y Gen., 2014 WL 1398594 (March 14, 2014).

The financial records of a city drug fund program that are in possession of the city are public records subject to disclosure pursuant to § 30-4-20(d). The records are not kept by the city in the regular course of business. The records were created in response to requests from SLED as part of an investigation of allegations that the city attorney was dismissing criminal charges under the condition that a “donation” be made to the city drug fund. The expungement provision in § 17-1-40 does not apply to a municipality as it is not a law enforcement agency.

The privacy exemption of § 30-4-40(a)(2) that would allow individual donors to keep their identities private is likely to be outweighed by the public’s right to information concerning the source of the city’s funds. While § 30-4-40(a)(11) normally allows an anonymous gift, a court would probably find that those who paid money for dismissal of charges did not make a “gift” and their identities would not be protected regardless of whether they gave money on the condition of anonymity. Op. S.C. Att’y Gen., 2012 WL 6218332 (Nov. 28, 2012).

Pursuant to § 30-4-20(d), a board member of a public body may attend a meeting of that body via phone, and be counted as part of the quorum and vote on matters at the meeting. Op. S.C. Att’y Gen., 2012 WL 3875118 (Aug. 28, 2012).

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), and are subject to disclosure unless exempt under a provision of FOIA. Op. S.C. Att’y Gen., 2007 WL 1302771 (March 30, 2007).

A majority of a school board held a phone conference to discuss the proposed school budget. The phone conference would constitute a “meeting” of a “public body” for FOIA purposes. The holding of such telephonic meetings without the requisite notice and access of the public to the discussions is in violation of FOIA. Op. S.C. Att’y Gen., 2006 WL 2593081 (Aug. 11, 2006).

Disclosure requirements under FOIA are mandatory unless specifically exempted and there is no duty of confidentiality imposed by FOIA on a public body. In *Burton v. York Sheriff’s Department*,

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358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004), the Court held that internal investigation reports relating to the performance of a sheriff and his deputies performance of their public duties are not exempt from the FOIA disclosure requirements and must be disclosed. Therefore, a sheriff's office must comply with the mandated disclosures pursuant to FOIA regardless of possible claims that may be made by its employees for releasing information pertaining to internal affairs investigations. Op. S.C. Att'y Gen., 2006 WL 1574915 (May 23, 2006).

The Majority Caucus of the House of Representatives is subject to FOIA provisions because it is supported in whole or in part by public funds and is expending public funds making it a "public body" for purposes of FOIA. The FOIA has no "de minimus" requirement. Our Supreme Court, in *Weston v. Carolina Research and Development Foundation*, "recognized that 'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke FOIA." Op. S.C. Att'y Gen., 2006 WL 1574910 (May 19, 2006).

Under the Charter Schools Act, the nature of charter schools is alluded to as both private and public. For FOIA purposes, charter schools are treated as "public bodies" pursuant to § 59-40-50(B)(10) that states a charter school must "be subject to the Freedom of Information Act, including the charter school and its governing body." Op. S.C. Att'y Gen., 2006 WL 703694 (March 9, 2006).

The Clinton Newberry Natural Gas Authority, providing substantial cash flow to the two municipalities, would be considered a "public body" for purposes of the Act and would be required to comply with the Act. The Authority currently is not taking any formal action to make the distribution to the two cities. Section 30-4-70 requires that "no formal action may be taken in executive session" and that "no vote may be taken in executive session." Such action may only be taken in open session. The Act defines "formal action" as "a recorded vote committing the body concerned to specific action." Op. S.C. Att'y Gen., 2005 WL 774149 (March 10, 2005).

The Investigative Review Committee (IRC) operating in conjunction with the Board of Veterinary Medical Examiners within the Department of Labor, Licensing and Regulation would be considered a "public body" for purposes of the Act and would be required to comply with the Act. The IRC as a "public body" would be required by the Act to formally adopt its actions in open sessions. While § 40-69-60 makes information received by the Board "through inspections and investigations" confidential, it is questionable whether this provision encompasses the actual recommendations to the Board of disciplinary actions by the IRC. The Act requires exceptions to be narrowly construed, so a court would most likely determine § 40-69-60 to be inapplicable to the IRC's recommendations to the Board. Op. S.C. Att'y Gen., 2005 WL 292232 (Jan. 27, 2005). See *Burton v. York Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct.App. 2004).

Section 30-4-30(a) provides that "any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40..." The term "person" is defined as "any individual, corporation, partnership, firm, organization or association" by § 30-4-20(b). Assuming a particular state agency fits within the definition of a "person," that agency could make a request for information from public bodies pursuant to the Act. A similar determination of a "person" could be made as to a particular municipal agency authorizing one agency to request and receive information from another agency where permitted. Therefore, sharing of information between a municipal police department and a clerk / treasurer's office for official purposes and the enforcement of codes is permitted. Op. S.C. Att'y Gen., 2004 WL 3058229 (Dec. 16, 2004).

Language in a statute that the State Commission for the Blind “shall meet at least monthly” must be construed to indicate that the legislature intended for the commission to meet not less than once a month. Section 30-4-20(d) would allow the Commission to meet telephonically, providing the Commission with a less expensive and time consuming means of fulfilling its statutory obligation of a monthly meeting. Op. S.C. Att’y Gen., 2004 WL 3058226 (Dec. 15, 2004).

The Act is applicable to the SC Association of Public Charter Schools (SCAPCS). SCAPCS comes within that portion of the definition of “public body” which includes “any organization, corporation or agency supported in whole or in part by public funds or expending public funds” because SCAPCS receives public funds, described as federal grant funds in addition to public charter school funds. Op. S.C. Att’y Gen., 2004 WL 2451466 (Oct. 27, 2004).

A court would likely find that the Chester County Economic Development Board’s exercise of governmental functions establishes it as a public body under FOIA’s definition of “public body” in Section 30-4-20(a). Op. S.C. Att’y Gen., 2001 WL 265255 (February 15, 2001).

For purposes of serving warrants, subpoenas and other legal documents, local law enforcement officers may request customer address information from the Seneca Light and Water Plant. Customer address information in a public body’s possession constitutes a “public record” as defined in Section 30-4-20(c). However, although the release of home addresses would not generally constitute an unreasonable invasion of personal privacy, if an individual has an unlisted or unpublished telephone number or there are reasons such as the need for security which mandate personal privacy, such a release could constitute an unreasonable invasion of personal privacy. Thus, the decision to disclose must be made on a case-by-case basis. Op. S.C. Att’y Gen., 2000 WL 1803605 (Oct. 2, 2000).

S.C. Code § 30-4-20(d) permits convening a meeting telephonically. Op. S.C. Att’y Gen., 2000 WL 1205954 (June 21, 2000).

The Real Estate Commission is a public body subject to the requirements of the Act; when the Real Estate Commission is operating as an appellate or quasi-judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or a public session. Op. S.C. Att’y Gen., 1994 WL 136198 (March 31, 1994).

Telephone bills of a public agency are considered public records and subject to disclosure under the Act. Section 30-4-40(a)(2) would not present valid reason, absent some specific showing to the contrary, to withhold telephone billing records. Op. S.C. Att’y Gen., 1993 WL 720090 (March 18, 1993).

The Act offers no guidance as to how a public body is to establish its agenda or how a member of the public will be allowed to participate at a meeting. It would be up to a court to review the policy and determine whether it is a reasonable policy considering all attendant facts and circumstances. Op. S.C. Att’y Gen., 1992 WL 575646 (July 23, 1992).

The practice of using telephone poll to handle matters over which public body has authority would most probably not comply with the Act. Rather, meeting of body either corporally or by means of electronic equipment such as a telephone conference call would be preferable way to handle an emergency situation, so the body may act collectively rather than its members acting individually and independently. Op. S.C. Att’y Gen., 1992 WL 575608 (Jan. 21, 1992).

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Whether family counseling center, a private, nonprofit human services delivery organization, which receives approximately 83 percent of its funding from private sources and the remainder from public monies through contracts and otherwise, would be deemed “supported in whole or in part by public funds” for purposes of the FOIA, remains a question of fact which may require judicial resolution. Public funds received under contract for provision of specific services may be exempt from consideration; access to DSS records would show how the money was spent. Public funds provided “in-kind” or via grants may be sufficient to bring an entity under the Act. It is suggested that center’s board of directors, working with counsel, review information and make a determination whether the extent of public funding would constitute support and, if so, decide how to handle requests made under the Act. Doubt as to applicability of FOIA should be resolved in favor of openness and disclosure. Op. S.C. Att’y Gen., 1992 WL 575607 (Jan. 16, 1992).

FOIA notice requirements should be followed by public body which will reconvene from “recess” or “adjourned” meeting wherever such reconvened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. Op. S.C. Att’y Gen., 1991 WL 474772 (June 28, 1991).

The Charleston Harbor Estuary Citizens’ Committee most probably would be considered a public body and thus subject to the terms of the Act. Op. S.C. Att’y Gen., 1989 WL 406186 (Sept. 21, 1989).

A school district may release the names of currently enrolled graduating seniors if the procedures for disclosure of directory information has been followed by the school district under 34 CFR § 99.37. Op. S.C. Att’y Gen., 1988 WL 383555 (Sept. 28, 1988).

Neither the County Directors and Supervisors Association of the SC Department of Social Services nor the SC Association of County Human Services Administrators, charitable corporations which receive no public funds, appear to fall within the definition of “public body,” and, therefore, would not be subject to the requirements of the Act. Op. S.C. Att’y Gen., 1988 WL 383530 (June 2, 1988).

Out-of-court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public; however, a court has an inherent authority to seal the records in an appropriate case. Op. S.C. Att’y Gen., 1988 WL 383515 (April 11, 1988).

A school improvement council would be considered to be a “public body” for purposes of the Act and as such would be subject to the requirements of the Act. Op. S.C. Att’y Gen., 1988 WL 383497 (Feb. 5, 1988).

A public body is precluded from taking formal action or a vote except in a public session. Because the distinction between purely procedural matters and “formal action” is often not clear, a public rather than secret vote should be taken if any doubt exists. Ad hoc committees or task forces appointed by the mayor and city council for information-gathering or advisory functions would be subject to the requirements of the Act. Op. S.C. Att’y Gen., 1988 WL 383489 (Jan. 14, 1988).



Ad hoc committee appointed by county council to study long range planning for a county is subject to requirements of Act. Op. S.C. Att’y Gen., 1985 WL 166109 (Dec. 17, 1985).

Records of marriage licenses are public records and are subject to terms of the Act. Op. S.C. Att’y Gen., 1985 WL 166033 (June 26, 1985).

Court would probably find that ad hoc citizens committee appointed by Town Council to be a public body subject to the Act. Op. S.C. Att’y Gen., 1984 WL 159931 (Oct. 26, 1984).

A final order or opinion issued in disciplinary proceeding by a state licensing board or agency is public information. Op. S.C. Att’y Gen., 1984 WL 159868 (May 25, 1984).

Certain public funds maintained by State Workers’ Compensation Fund do not appear to be confidential and are subject to disclosure under Act, unless exempt under provision of Section 30-4-40. Op. S.C. Att’y Gen., 1984 WL 159860 (May 10, 1984).

Records of Department of Mental Health which identify patients or ex-patients are confidential by law and are not subject to disclosure pursuant to Act. Op. S.C. Att’y Gen., 1984 WL 159830 (Feb. 24, 1984).

The Act is applicable to a breakfast meeting held by a member of the General Assembly with the city council, mayor, and public service district commissioners to discuss possible legislation that directly affects these bodies. Op. S.C. Att’y Gen., 1983 WL 142769 (Dec. 21, 1983).

A committee may be subject to the Act if it is supported in whole or in part by public funds, or if it expends public funds. Op. S.C. Att’y Gen., 1983 WL 142726 (Aug. 8 1983).

The Act applies to any meeting of a public body whether the meeting is designated as formal or informal and whether action is taken upon public business or merely discussed. Op. S.C. Att’y Gen., 1983 WL 145710 (July 11, 1983).

Under § 30-4-20(a) a “public body” is defined by statute to include any governmental body or political subdivision of the state or “... any organization, corporation or agency supported in whole or in part by public funds or expending public funds...”; case law defines a private hospital as one which is owned, maintained, and operated by a corporation without any participation by any governmental agency and receipt of public compensation does not transform a private hospital into a public institution; receipt of public funds on a contractual basis for services rendered to the county for the care of indigent patients is not “. . . support in whole or in part by public funds... .” In these particular circumstances, this private corporation has not assumed the status of a public body and is not subject to the requirements of the Act. Op. S.C. Att’y Gen., 1982 WL 154985 (March 12, 1982).

The Act encompasses telephone conference calls within the definition of the term “meeting” found in § 30-4-20(d). Op. S.C. Att’y Gen., 1981 WL 96555 (March 25, 1981).

Documents compiled in a research survey and a tabulation of the resultant responses done by the Office of the Executive Director for House Research at the request of a member of the House of

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Representatives concerning a bill are public records and are subject to public disclosure. Op. S.C. Att'y Gen., 1980 WL 81901 (Feb. 5, 1980).

### **§ 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.**

(A)(1) A person has a right to inspect, copy, or receive and electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected right, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request

(B) The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

(C) Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. This determination must constitute the final opinion of the public body as to the public availability of the requested public record, however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. The full amount of the total cost must be paid at the time of the production of the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, electronically transmitted, nor personally delivered to the person requesting the document within the time set forth by this section, , the request must be considered approved as to nonexempt records or information. Exemptions from disclosure a set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

(D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
- (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day;
- (3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months; and
- (4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.

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(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request.

HISTORY: 1978 Act No. 593, § 4; 1987 Act No. 118, § 4; 1990 Act No. 555, § 1; 1998 Act No. 423, § 1, 2017 Act No. 67, § 1.

### PRACTICE POINTERS

Many public records contain personal identifying information such as social security numbers. Social security numbers are routinely collected as a necessary part of the daily function of some local governmental entities. Section 30-2-310(A)(1)(b) requires agencies that collect social security numbers to segregate those numbers so that they may be easily redacted pursuant to a public records request.

In addition, § 30-2-330(A) prohibits the filing of documents to be recorded in the register of deeds or clerk of court's office that include personal identifying information such as a social security number or driver's license number, 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 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.

Local government entities are looking for ways to cut costs and become more efficient. One of the options that is being explored is cloud computing, which is a form of outsourced IT services. In cloud computing, software, resources, and other technology are shared over the internet and are available to computer users on demand. E-mail, word processing, and financial systems are examples of the types of information that can be outsourced in cloud computing. Local governments contract with third party vendors to provide cloud computing services usually on a subscription-based or pay-per-use service. It removes the costs associated with maintaining program licenses as well as the maintenance costs associated with maintaining hardware operations such as data backup and storage.

However, cloud computing presents some security concerns since data is being turned over into the hands of a third party. It may also present some FOIA issues such as who is now the custodian of record? The local government agency or the vendor? (Looking at the definition of public record, it would appear that the local government is still the custodian of record as the public record does not change status simply because it passes through a public body's hand to a non-public entity). What if the vendor has erased the information being requested? Who has access to the data that is being handled by the vendor and what are their safeguards for a data breach? Is there an audit of the vendor services? Any county entity that is considering cloud computing should ask these kinds of questions and make sure these issues are addressed in the contract with the vendor.

Another recent technology development may present some FOIA issues for local government and

public officials. In the ongoing effort to engage the public and increase transparency, governmental agencies are posting information on social media sites such as Facebook and Twitter. However, be aware that pages or information from social networking tools are likely to be considered public records subject to FOIA and record retention rules. Public officials especially need to be careful that their communications with other members of a governing body over social media networks do not violate the public meeting requirements of FOIA. This document does not address personal webpages and postings of employees, but this is an area that has the potential to raise issues under FOIA.

This part of the law gives the basic rules for access to public records. Any person, including a business, corporation, or other organization, is permitted to inspect (look at) and receive copies of public records. This privilege is limited only to the extent that the record, or a part of it, is exempted from the Act or made confidential either in FOIA or another statute or law.

This law also now prohibits inmates from using FOIA. *See* S.C. Code Ann. § 30-4-30(A)(1) (Noting that the right to use FOIA “does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal facility....”). However, the law also specifically prohibits prosecutors from using this provision to avoid providing required discovery in criminal cases. That said, South Carolina courts have long held that FOIA cannot be used to circumvent, supplant, or displace the applicable rules of discovery in pending cases. *See* *Evening Post Pub. Co. v. City of North Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005); *State v. Robinson*, 305 S.C. 469, 476, 409 S.E.2d 404, 409 (1991) (citing to *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 110 S.Ct. 471, 107 L.Ed.2d 462 (1989); *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978)).

A public body may impose reasonable rules for access to public records. For example, a public body may permit inspection of public records during regular business hours in the presence of a person acting as the custodian of records particularly when access to original records, court records, and records of historic or economic value is sought.

In regard to access to records, a written FOIA policy is especially important. A policy should, at a minimum, specify the manner and method for inspection of records, charges for fees and costs for searching for and making copies of records and specify when fees and costs are waived. Basic office procedures are discussed in the section entitled “Responding to a FOIA Request” in the Preface. Issues related to fees and costs are discussed in § 30-4-30(b).

A response to a FOIA request must be made in writing within 10 or 20 business days, depending on the age of the documents, as previously discussed. The term “business days” excludes Saturdays, Sundays and legal public holidays. Since the response letter is deemed to be the public body’s final opinion and determination on the public availability of the requested record, the letter is legally significant. In practice, many FOIA requests are vague. A written reply acknowledging receipt of the request, stating what is understood to be the subject of the request, the action being taken to provide public records, and a request to clarify any uncertainties is appropriate. However, it is important to remember that while the letter is the public body’s final opinion as to the availability of the requested record, it is not, nor is it required to be, a final decision as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by § 30-4-40 or other state or federal laws. For further information, see the section entitled “Responding to a FOIA Request” in the Preface.

## § 30-4-30

**Costs and Fees:** The Act permits, but does not require, charging “reasonable” costs and fees for searching for and copying documents. However, a fee may not be charged to examine a FOIA request and the records in order to determine if the records can be provided. Thus, the costs of obtaining legal advice about a FOIA request cannot be charged to the requestor.

The Act regulates costs and fees by saying that (1) fees may not exceed actual cost of the search, retrieval, and redaction of records; (2) public bodies shall develop a fee schedule to be posted online; (3) fees must be uniform for copies of the same record; and (4) the fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of records, has the necessary skill to perform the request. records must be furnished at the lowest possible cost to the person requesting them. For example, the public body is entitled to charge for staff time required to search for and make copies of records. But, the same fee must be charged for similar records regardless of who makes the request. Charging costs and fees is not mandatory and costs and fees may be waived. This is a practical response when, for example, only a few copies are requested which do not warrant the time and expense for accounting for the income. The Act also states that costs and fees may be waived when providing the records primarily benefits the general public. The issue of waiver of costs and fees should be part of a written office policy. A deposit not to exceed 25 percent of the total reasonably anticipated cost for reproduction of the records may be required to the public body searching for or making copies of records. Finally, the full amount of the total cost *must* be paid at the time of the production of the request. It is strongly recommended that the public body limit the forms of payment to cash or other form of immediate payment.

**Form of record:** Records must be provided in a form that is “both convenient and practical” for use by the person requesting the record if it is equally convenient for the public body to provide the record in that form. This part of the Act is probably applicable to electronic data and perhaps to the form of a record provided to a person with disabilities.

Electronic data should be assimilated and provided in the same or similar form used by the public body. A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request. The courts have not discussed how this section may apply to persons with disabilities. The public body should consider the form of the record requested by a person with disabilities. The Act does not mandate that a public body provide a record in a form different from that in which it was originally prepared. However, care should be taken to be sensitive to the needs of the disabled community. If a record is also available in, for example, braille then a braille version should be made available upon request. If the public body does not normally prepare the record in a form usable by the requestor, and if the requestor preauthorizes the charges, the public body may assist the requestor by reformatting the record into a usable form. Caution should be taken in as much as this issue has not been addressed by the courts.

**Response letter:** A written response to a FOIA request must be mailed or personally delivered to the requestor within the statutory allotted business days from the date the request was received. If there will be a delay in responding within the allotted time, contact the requestor and confirm any discussions in writing. If an agreement is reached to extend the time in which to respond, it is especially important to write and confirm the agreement along with any other issues like costs, fees, deposits, and the time and place for inspection of records. See the section entitled “Responding to a FOIA request” in the Preface for more on this subject.

Failure to respond in writing within the statutory allotted business days means, according to the statute, that the disclosure of public information at the time and place requested is deemed approved as to nonexempt records or information.

The statute states that within the statutory allotted business days from the date of receipt of a written request, the public body shall notify the requestor of its “determination and the reasons therefore.” According to the statute, the determination is the final opinion of the public body as to public availability of the requested record. However, it is not required to include a final decision as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by § 30-4-40 or other state or federal laws. Any agreement altering the time periods in which to respond and any discussions about fees and costs must be documented in writing with a copy mailed or personally given to the requestor.

**Legal public holidays:** A public body is given the statutory allotted days excluding Saturdays, Sundays, and legal public holidays to respond to a FOIA request. “Legal public holidays” are determined by the governing authority of the public body. For example, the State government operates according to the published list of state “legal public holidays” but the Governor is empowered to authorize other “legal public holidays” by executive order. Similarly, local governments operate according to a predetermined list of holidays but the governing body may authorize different “legal public holidays” for the county. It is possible and permissible for a local government to operate according to a calendar of legal public holidays that is different from the state government. And, in that case the local government’s calendar of legal public holidays controls. However, be aware that the production timeframes (30 or 35 days) are straight calendar days so that legal holidays are included in determining the time.

**“In-person” requests:** No written request is required, no waiting period is allowed, and copies should be made available when a request for records is made in person for (1) the last 6 months of meeting minutes; (2) the last 14 days of law enforcement reports specified in § 30-4-80(A)(8); (3) the last 3 months of jail, detention center, and prison records identifying confined persons; and (4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period. Section 30-4-50(A)(8) states that the 14-day reports are: “reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. When a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.” Nothing in the Act prevents documenting, in writing, these FOIA requests and the public body’s response.

The period of time given for each kind of record in this subsection does not mean that records created before these periods of time are not public records. The window of time given is simply to ease the burden of immediately providing certain documents for a given period of time.

### CASE NOTES

A state agency violated § 30-4-30(c), when it responded, “If we are able to locate, obtain, or release the requested file(s) you will be notified of the decision and the reasons for it.” While the agency did respond to the requestor, its response was not a final opinion on the public availability of the

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requested documents and did not state whether the information requested was publicly available for inspection, copying or production. *Sloan v. S.C. Department of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014).

The Attorney General cannot delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion or discovery order in any other case. FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. *Summer v. Wilson*, Civil Action No. 12-CP-36-00688 (8th Cir. July 8, 2014).

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 (2008). *[Ed. Note: While it is not required to register a copyright, registration is a prerequisite to filing an infringement suit and collecting attorney fees and statutory damages.]*

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 (2008).

Although § 30-4-30 gives any person the right to inspect or copy any public record of a public body, nothing in the statute provides that records must be sent to a person for inspection before paying a copying fee, and nothing in the statute mandates special consideration for inmates. *Furtick v. S.C. Dept. Of Corrections*, Ct. App. 2007 (2007 WL 8327525). (Not reported in S.E.2d.)

Information concerning physicians' salaries and purchase prices for their practices, was public information under FOIA and did not amount to trade secrets exempt from the FOIA. *Campbell v. Marion County Hospital*, 354 S.C. 274, 580 S.E.2d 163 (Ct.App. 2003).

Section 12-54-190 does not alter the non-disclosure provisions of § 12-54-240 since the legislature could not reasonably have intended to prevent disclosure of tax commission assessments to local taxing authorities. The purpose of the Act is to protect the public from secret government activity. The fact that the tax commission refused to sign a confidentiality agreement with a property owner was sufficient evidence on which to hold that the tax commission did not promise that the information in question would be kept confidential. *SC Tax Comm. v. Gaston Copper Recycling Corp.*, 316 S.C. 163 447, S.E. 2d 843 (1994).

Under §30-4-30(c), failure to respond within the response period means that the disclosure of nonexempt material at the time and place of access which the party requested is deemed approved. *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 314 S.C. 30, 443 S.E. 2d 574 (1994).

### ATTORNEY GENERAL'S OPINIONS

The names and addresses of individuals and businesses who have received loans from a city program funded through a combination of federal funds and the city's general funds are likely to be considered public records under FOIA. The privacy exemption of personal information in §



40-4-40(a)(2) is outweighed by the fact that the loan program involves the disbursement of public funds and the only way the public can determine how public funds were spent is through access to the records and affairs of the organization receiving and spending the funds. Op. S.C. Att’y Gen., 2011 WL 6959371 (Dec. 5, 2011).

Case law recognizes that privacy expectations may be diminished in prisons or jails due to security concerns. Therefore, it is likely that an inmate’s personal calls as well as surveillance footage of areas within a jail are subject to disclosure under § 30-4-30(a). However, a court may consider whether the inmate was placed on notice of the electronic monitoring. This can be accomplished through signs near video cameras or telephones, information in orientation, prison handbooks, lectures, or discussions regarding monitoring policies. Op. S.C. Att’y Gen., 2011 WL 2648720 (July 21, 2011).

Because a jail or detention center would be considered a “public body,” copies of arrest warrants and incident reports maintained at a county detention center must be made available for walk-in inspection by the media, even though the same information could be obtained at the arresting law enforcement agency. Op. S.C. Att’y Gen., 2010 WL 3048335 (July 10, 2010).

A sheriff’s office questioned whether the intent of the response period rule in § 30-4-30(c) requires law enforcement agencies to adhere to calendar days since they are 24-hour public safety entities and not normal administrative offices, and since it was the published policy of the county by resolution to have records reviewed Monday through Friday from 8:00 a.m. to 5:00 p.m. excepting Saturdays, Sundays, and legal public holidays. While FOIA does not expressly address “24-7” access to incident reports, the statute does mandate far more than the public being given access to these records only during traditional “9 to 5” business hours. Therefore, it appears that § 30-4-30(d)(2) requires reasonable public access to a sheriff’s incident reports at night, on weekends and during legal holidays. Op. S.C. Att’y Gen., 2008 WL 5476556 (Dec. 23, 2008).

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. Op. S.C. Att’y Gen., 2007 WL 4284631 (Nov. 7, 2007).

The city council questioned whether tapes of their meetings could be destroyed as had been the practice. The Public Records Act governs the custody and preservation of public records and defines a “public record” by referencing the definition in § 30-4-20(c). Because the city creates and retains 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. Op. S.C. Att’y Gen., 2007 WL 1651338 (May 21, 2007).

Although the SC Retirement System’s regulations state that all records of retirement system members are classified as confidential and shall not be disclosed to third parties, this cannot be used as a basis to deny a request to disclose the names of agency employees that participate in the TERI program and the date they began participation. Where a regulation is in contravention of the FOIA disclosure requirements, the FOIA must prevail. Op. S.C. Att’y Gen., 2007 WL 419417 (Jan. 27, 2007).

Section 44-53-530 states that “all forfeited monies and proceeds from the sale of forfeited property as defined in § 44-53-520 must be retained by the governing body of the local law enforcement agency

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or prosecution agency and deposited in a separate, special account in the name of each appropriate agency.” All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under FOIA provisions. Op. S.C. Att’y Gen., 2005 WL 2652378 (Oct. 5, 2005).

Regarding inmates, § 30-4-30(3) states that “documents identifying persons confined in any jail, detention center, or prison for the preceding three months” are among the records of a public body open for public inspection. Therefore, the “names of individuals confined in a jail or prison are accessible to the public in such circumstances.” Information as to the release of a prisoner is also public information because the matter of the sentence and the particular punishment for a particular crime are matters of public record and a prisoner’s release could be easily calculated by such public information. Op. S.C. Att’y Gen., 2005 WL 1983349 (Aug. 5, 2005).

Section 30-4-30(a) provides that “any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40...” The term “person” is defined as “any individual, corporation, partnership, firm, organization or association” by § 30-4-20(b). Assuming a particular state agency fits within the definition of a “person,” that agency could make a request for information from public bodies pursuant to the Act. A similar determination of a “person” could be made as to a particular municipal agency authorizing one agency to request and receive information from another agency where permitted. Therefore, sharing of information between a municipal police department and a clerk / treasurer’s office for official purposes and the enforcement of codes is permitted. Op. S.C. Att’y Gen., 2004 WL 3058229 (Dec. 16, 2004).

Public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under the Act. Op. S.C. Att’y Gen., 1993 WL 439034 (Sept. 30, 1993).

The Act makes no distinction between members of public, candidates for elected public office, members of legislature, or other categories of requestors as to who may be able to inspect or copy records of public body. Op. S.C. Att’y Gen., 1993 WL 439034 (Sept. 30, 1993).

The District may set up reasonable requirements for viewing and copying records. However, what is considered reasonable would require factual determination which the Attorney General’s Office cannot resolve by an opinion. Op. S.C. Att’y Gen., 1992 WL 575646 ( July 23, 1992).

Out-of-court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public; however, a court has an inherent authority to seal the records in an appropriate case. Op. S.C. Att’y Gen., 1988 WL 383515 (April 11, 1988).

Whether a sheriff’s department can release the tape of a 911 conversation or its contents must be determined by that agency; any decision as to non-disclosure would be subject to possible judicial review. Op. S.C. Att’y Gen., 1988 WL 383511 (March 30, 1988).

The Comptroller General may refer requests for information to the agency housing the original record or information; if that agency refuses to honor the request for material deemed to be

disclosable under the Act, the Comptroller should then make the information available. The Act itself does not appear to contemplate an exchange of information between state agencies. The Act allows for certain direct and indirect costs to be considered in establishing a fee for searching for or making copies of records. While the Act does not specifically require that a request for information be made in writing, it would be a protective measure to have such requests in writing to establish response period. Op. S.C. Att’y Gen., 1987 WL 245477 (July 16, 1987).

System of allowing access to official records of Probate Court through a staff member and by charging fee appears to comport with provisions of Act. Op. S.C. Att’y Gen., 1985 WL 166033 (June 26, 1985).

Supplementary Homicide Reports should be disclosed under the Act. Op. S.C. Att’y Gen., 1983 WL 142754 (Nov. 4, 1983).

Any written request is sufficient under the Act; an attorney’s work product and any correspondence generated by that attorney for the public body which he represents may be removed from records to be disclosed, along with any other material violative of the attorney-client relationship; that information is sought in furtherance of a civil law suit has no effect on the requirement for disclosure mandated by the Act; medical records in the possession of a public body should not be disclosed absent consent or a court order; there is no federal legislation prohibiting the disclosure of arrest records and criminal investigation reports. Op. S.C. Att’y Gen., 1981 WL 96590 (July 7, 1981).

Consumer complaints received under §37-6-117 and which are not subject to the investigatory powers of the administrator under §37-6-106 are public records which the public has the right to inspect or copy pursuant to §30-4-30. Op. S.C. Att’y Gen., 1980 WL 81894 (Jan. 28, 1980).

Vehicle towing records of a sheriff may be open for public inspection. Op. S.C. Att’y Gen., 1975 WL 22494 (Nov. 21, 1975).

### **§ 30-4-40. Matters exempt from disclosure.**

(a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal services and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses, information relating to public records which include the name, address, and telephone number or other such information of an

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individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim's statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim's next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records, video or audio recordings, or other information compiled in for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- (A) would interfere with a prospective law enforcement proceeding;
- (B) would deprive a person of a right to a fair trial or an impartial adjudication;
- (C) would constitute an unreasonable invasion of personal privacy;
- (D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;
- (E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;
- (F) would endanger the life or physical safety of any individual;
- (G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

- (a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;
- (b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;
- (c) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

(6) All compensation paid by public bodies except as follows:

- (A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

(B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

(C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

(E) For purposes of this subsection (6), “agency head” or “department head” means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business: (1) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

(a) the offer to attract an industry or business to invest or locate in the offeror’s jurisdiction is accepted by the industry or business to whom the offer was made; and

(b) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

(11) information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes

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of this item, “gift to a public body” includes, but is not limited to, gifts to any of the state-supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

(12) Records exempt pursuant to Section 9-16-80(B) and 9-16-320(D).

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item “materials relating to not fewer than the final three applicants” do not include an applicant’s income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

(14) (A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution’s financial or administrative records.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

(16) Records exempt pursuant to Sections 59-153-80(B) and 59-153-320(D).

(17) Structural bridge plans or designs unless: (a) the release is necessary for procurement purposes; or (b) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos,

images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11-45-30.

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30-4-30, 30-4-50, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

(d) A public body may not disclose a “privileged communication”, “protected information”, or a “protected identity”, as defined in Section 23-50-15 pursuant to a request under the South Carolina Freedom of Information Act. These matters may only be disclosed pursuant to the procedures set forth in Section 23-50-45.

HISTORY: 1978 Act No. 593, § 5; 1980 Act No. 495; 1987 Act No. 118, § 5; 1993 Act No. 181, § 489; 1994 Act No. 404, § 1; 1995 Act No. 1, § 11; 1996 Act No. 458, Part II, § 31 D; 1998 Act No. 371, § 7; 1998 Act No. 423, §§ 2, 3, 4, 5 & 6; 1999 Act No. 122, § 4; 2002 Act No. 339, §§ 18, 19, & 29; 2002 Act No. 350, § 1; 2003 Act No. 34, § 2; 2003 Act No. 86, §§ 4 & 5; 2005 Act No. 125, § 2; 2006 Act No. 380, § 2; 2017 Act No. 67, § 1.

The federal Privacy Act of 1974, PL 93-579, 88 Stat 1896, is codified at 5 U.S.C.A. § 552 A and as a general rule, does not apply to state or local governments. However, there is an uncodified provision, relating to social security numbers, that does apply to state or local governments. For example, claimant agencies participating in the Setoff Debt Program are not governed by the federal Privacy Act, unless they request or demand social security numbers from individuals. If a social security number is requested or demanded, the individual must be told whether disclosing the social security number is voluntary or mandatory and for what purpose it will be used. Claimant agencies are free to obtain social security numbers from other sources, such as from private entities or from other state or local agencies, if those agencies are willing to provide them.

The Welfare Reform Act of 1996, P.L. 104-193, added 42 U.S.C. § 666(a)(13) and (a)(16) which now requires the states, in order to qualify for various types of welfare funding, to have in place a number of procedures to facilitate the collection of overdue child support payments. The procedures require that social security numbers of any applicant for a professional license, commercial driver’s license, occupational license, recreational license, or marriage license be recorded on the application; any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment have their social security number placed in the records relating to the matter, and the social security number of any deceased individual must be placed in the records relating to the death and be recorded on the death certificate.

## § 30-4-40

In response to the Welfare Reform Act, the South Carolina General Assembly has adopted a variety of provisions that require disclosure of social security numbers. For example, Section 63-11-730 requires disclosure of an applicant's social security number for appointment to a state or local foster care review board; Section 20-1-220 requires that a marriage license cannot be issued unless a written application is made containing both parties' social security numbers; and Section 44-63-75 requires that social security numbers must be included on forms used to record birth, death, divorce, the application for marriage, and birth and death certificates.

The South Carolina Freedom of Information Act requires state and local governments to make public records available upon request unless a specific exemption to the FOIA applies. When a public record contains exempt and nonexempt information, the exempt information must be separated from the nonexempt information and the nonexempt information must be made available. As it relates to social security numbers, the key exemption in the FOIA is Section 30-4-40(a)(2) which allows a public body to withhold "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy." The Courts and the South Carolina Attorney General's Office have consistently held that social security numbers may be withheld from disclosure by removing or obliterating the social security number from a released document. In 1999, the Attorney General's Office advised that "[t]he South Carolina Freedom of Information Act authorizes nondisclosure of these social security numbers pursuant to Section 30-4-40(a)(2) which exempts disclosure of records where such would constitute the unreasonable invasion of personal privacy. This office has previously concluded that social security numbers would fall within this exemption and thus, a social security number could be withheld from disclosure to the public." However, in this opinion dealing with disclosure of social security numbers contained on marriage applications and licenses, the Attorney General's Office stated: "While Social Security numbers (as opposed to the rest of the marriage license application) are exempt under the Freedom of Information Act, the Act does not require withholding of even this exempt material from public disclosure. Instead, the Freedom of Information Act leaves this decision to the records custodian." 1999 Op. Atty. Gen., dated May 18, 1999 (1999 WL 387064 (S.C.A.G.)).

### PRACTICE POINTERS

General: The decision to claim an exemption from disclosure under this section is optional. The public body has the option to make the listed records available to the public or it may decline to do so by responding in writing within the statutorily allotted business days from the date of receipt of the request that the records are "exempt" under FOIA. Note that in *Bellamy v. Brown*, 305 S.C. 291, 408 S.E. 2d 219 (1991), the Supreme Court held that FOIA does not create a duty of confidentiality. Accordingly, no cause of action for invasion of privacy can be maintained against a public officer based on a FOIA disclosure.

Even though the FOIA allows the public body to exempt certain records after a request is made, there are varying interpretations among practitioners. Some believe it would be in the public body's best interest to assert the statutorily allowed exemption before any request is made. For example, the public body could explicitly exempt from disclosure specific information that falls within one of the enumerated categories in § 30-4-40 before a request for disclosure is made.

The blanket adoption of the exemption could be adopted as a permanent ordinance or as an additional point in the portion of the county budget ordinance. Any adoption of the exemption



should also state who, if anyone, may waive the exemption on behalf of the county. This specific authorization to waive an exemption also serves to preclude a waiver by other employees.

Companies looking to locate in this state frequently ask for confidentiality agreements. Such agreements may require counties to maintain the confidentiality of certain information for a period of years. They may also require prior written consent from the company before any public announcements can be made by the county regarding the company. Counties need to be careful that the terms of these agreements do not cause the county to violate FOIA as much of the information used to attract an industry or business will become public under § 30-4-40(a)(9). One method of handling this potential conflict is to include a provision in the confidentiality agreement that after the information becomes public under § 30-4-30(a)(9), if the county receives a FOIA request for confidential information, it will notify the company in advance of disclosing the information, in order to give the company an opportunity to protect its confidential information under § 30-4-110(B).

In *Post & Courier v. City of North Charleston*, the Court ordered the release of 911 tapes prior to a criminal trial that would use the tapes. The court indicated that the financial cost of a venue change is not the type of harm contemplated for the exemption found in § 30-4-40(3)(A), the court seemed to indicate that if the release of the information would hurt the ability of a defendant to have a fair trial, the exemption would apply. In two separate cases in March 2012, circuit court judges denied FOIA requests for dashcam videos in pending criminal cases. In both cases, counsel for the defendants argued that the release of the video would hurt their client's chances at a fair trial.

Section § 23-1-240 authorizes state and local law enforcement agencies, under the direction of the Law Enforcement Training Council, to implement the use of body-worn cameras pursuant to guidelines established by the Law Enforcement Training Council. Data recorded by a body-worn camera is not a public record subject to disclosure under § 23-1-240(G)(1). SLED, the Attorney General, and a circuit solicitor may request and receive the data for any legitimate criminal justice purpose and may, along with any other law enforcement agency, may release the recorded data in its discretion. A law enforcement agency may request and receive data if it is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer.

Additionally, the following persons are also entitled to request and receive such data pursuant to the S.C. Rules of Criminal Procedure, the S.C. Rules of Civil Procedure, or a court order: (a) a person who is the subject of the recording; (b) a criminal defendant if the recording is relevant to a pending criminal action; (c) a civil litigant if the recording is relevant to a pending civil action; (d) a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related; (e) a parent or legal guardian of a minor or incapacitated person described in sub-item (a) or (b); and (f) an attorney for a person described in all of the sub-items above.

### **SPECIFIC EXEMPTIONS IN FOIA**

The following are comments about records which are exempt from disclosure under FOIA. The comments are presented in the same paragraph order as the statute. Note that a public body is required to separate exempt from nonexempt information in a record and provide the record as

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modified to the requestor. Thus, there will be instances where a modified record must be provided in order to utilize the exemptions given here.

**Trade secrets, etc. ¶ 1.** “Trade secrets” are defined in this section at § 30-4-40(a)(1). Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds is public information and is not exempt under the “trade secrets” exclusion. A public body is not required to disclose trade secrets which are contained in these type of records or records concerning companies with whom the public body has contracted or otherwise engaged in business relations. Other non-public information specified in this paragraph includes paid subscriber information and customer lists.

Because this section is optional relative to disclosure, the terms of any contract or other agreement should be reviewed to determine the existence of any covenants to maintain records in confidence. Secondly, the owners or drafters of the records should be consulted when their records, containing exempt information, are requested. When providing records, exempt and nonexempt information may be separated.

**Information of a personal nature ¶ 2.** A simple test to determine if information is of a personal nature and not subject to disclosure is whether information is about an individual’s private life rather than information arising under an individual’s official capacity. For example, a social security number is information of a personal nature. Social security numbers should be removed from records like travel vouchers before providing them to the public.

**Law enforcement records ¶ 3.** Paragraph 3 details a list of law enforcement records which are not considered public and are exempt from disclosure under the Act. Information of a personal nature, information that identifies informants, information that may lead to an arrest or prosecution, special investigation methods, and information that could lead to endangering the life or physical safety of a person, as well as wiretaps or other intercepted electronic communication not disclosed at trial are not required to be disclosed. Audio of the final words of a victim in a 911 call are exempt. Records, video or audio recordings or other information compiled by law enforcement, but only to the extent that the production of the records or information would disclose: information that may lead to an arrest or prosecution; information that would deprive a person of a right to a fair trial or an impartial adjudication; or information that would be considered an unreasonable invasion of personal property.

**Matters exempted from disclosure by statute or law ¶ 4.** This exemption requires familiarity with a vast amount of statutory and common law. A record made confidential by statute or other law is not required to be provided to the public.

**Contracts ¶ 5.** Records concerning proposed contractual arrangements and records incidental to the proposed sale or purchase of property are exempt. These records may be sheltered from view until the contract is entered into or the property is sold or purchased. Specified confidential proprietary information like a loan application or financial statement which is not otherwise publicly available is not required to be disclosed. Note that pursuant to § 4-9-130, a public hearing must be held before council action is taken to sell, lease or contract to sell or lease real property owned by the county.

**Compensation and Salaries ¶ 6.** Information about specified salary ranges and recipients is required to be disclosed. In sum that statute requires disclosure of:

An agency or department head is a person who has authority and responsibility for a department of an institution, board, commission, council or the like.

A. \$50,000 or more	B. \$30,001 to \$50,000	C. \$30,000 or less	D. \$30,000 or less
The exact compensation for all employees, including part-time employees, anyone paid honoraria or compensation for special appearances, and agency or department heads.	The compensation level within a range of \$4,000 starting at \$30,000+ increasing in increments of \$4,000 for classified and unclassified employees & contract instructional employees not subject to item A.	The salary schedule showing the compensation range for classified employees not subject to item A.	The compensation level within a range of \$4,000 commencing at \$2,000 for unclassified employees including contract instructional employees not subject to item A.

**Attorney work product ¶ 7.** Correspondence, work product and attorney-client privileged material prepared by a public body’s lawyer is not required to be disclosed. Consult the attorney if this material is requested. The client must claim the privilege and there are significant issues of law concerning the attorney-client privilege.

**Other matters:** Certain materials pertaining to General Assembly members and staff ¶ 8; Economic development materials ¶ 9; Department of Revenue materials ¶ 10; University donors, exceptions ¶ 11; and Investment of retirement funds ¶ 12; are made exempt in the paragraphs noted here.

**Employment documents ¶ 13.** In general, documents gathered by a public body during a search to fill an employment position are not public records until the applicant list is culled to the “finalists.” This section makes information about “finalists” a matter of public record. The application materials for at least 3 finalists must be disclosed. The number of applicants considered, without identifying who or providing documentation about them, is also a matter of public record and must be provided upon request. Information about the finalists which becomes a matter of public record excludes income tax returns, medical records, social security numbers, or other information made non-public under this section. Remove information of a personal nature from a copy of the document and provide the modified record upon request.

**Higher education research records ¶ 14.** Research records and data collected by faculty members at state institutions of higher education are not public records.

**Identity of whistle blowers ¶ 15.** The identity of a whistle blower is not a matter of public record. The statute restricts this exemption to those making a complaint or disclosing information to a “state regulatory agency” which could be DHEC or another agency vested with jurisdiction to guard the environment. However, the exclusion is not restricted to “environmental whistle blowers.” See also paragraph 3 in this statute.

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Tax payer confidentiality § 6-1-120 was added to make certain taxpayer information confidential and a violation is punishable as a crime with disqualification from public office or employment. The Act adds § 6-1-120 to provide that, unless a court directs disclosure, it is unlawful for an officer or employee of a county or its agent to divulge or make known the information in a report, tax return, or application required to be filed by the taxpayer with that county, pursuant to an ordinance imposing: (1) a hospitality or accommodation tax authorized; (2) a business license tax authorized under § 4-9-30(12); or (3) a fee calculated using either the gross proceeds of sales or paid admissions.

Section 6-1-120 permits: (1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them; and (2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or an agent retained by an officer or employee in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application. A person violating this law is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. In addition, if the person convicted is an officer or employee of the county, the offender is dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction. Section 2 of the Act relates to state tax information.

Section 6-1-120 also makes taxpayer information submitted in connection with local government taxes private.

**Confidentiality of information appearing on a driver's license.** Section 30-4-160 prohibits the Department of Public Safety from selling or providing social security numbers, photographs or signatures to a private party.

**Confidentiality of information contained in a veteran's discharge record.** Section 30-15-60 states that a DD 214 record or other discharge record is not a public record for purposes of Chapter 4, Title 30.

### CASE NOTES

Although FOIA requires all materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying, the applicants' home addresses, personal telephone numbers, and personal email addresses are "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy" and are exempt from disclosure under § 30-4-40(a)(2). *Glassmeyer v. City of Columbia*, 414 S.C. 213, 777 S.E.2d 835 (Ct. App. 2015).

A 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 "finalists" 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*, 374 S.C. 307, 649 S.E.2d 28 (2007).

The Act’s exemptions are to be narrowly construed so as to fulfill the purpose of the Act to guarantee the public reasonable access to certain activities of the government. An exemption from disclosure under the Act provides the government with discretion to either release the record or withhold it. Whether a record is exempt from disclosure under the Act depends on the particular facts of the case and the government has the burden of proving that the exemption applies. *Evening Post Publishing Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 ( 2005).

The financial burden of a change in venue did not justify withholding the tape of a 911 call under the § 30-4-40(a)(3)(B) exemption for records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime, if the disclosure of the information would harm the agency by the premature release of information to be used in a prospective law enforcement action. The financial cost of a venue change is not the type of harm this exemption is intended to prevent. Rather, 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. A city is not entitled to a presumption that it would be harmed by disclosure of a 911 tape even though the audiotape was to be used in a criminal trial. A city is required to prove particular harm under § 30-4-40(a)(3)(B). *Evening Post Publishing Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005). *[Editor’s Note: Section 30-4-40(a)(3) was amended so that ‘harm’ no longer has to be demonstrated to claim the provisions of this exemption. It may be a factor a judge considers in determining whether an exemption should be granted under § 30-4-50(A)(9).]*

A prosecutor’s belief that the release of a 911 tape prior to a criminal trial would have caused him to lose his license to practice law did not justify refusal to disclose the audiotape under the § 30-4-40(a)(3)(B) exemption. The Rules of Professional Conduct did not affect whether the 911 tape was exempt from disclosure under the Act since disclosure under the Act was the obligation of the government and professionalism was the personal obligation of a government attorney. *Evening Post Publishing Co. v. City of North Charleston*, 363 S.C. 452, 611 S.E.2d 496 (2005).

### ATTORNEY GENERAL’S OPINIONS

When news reports of investigations and arrests are posted on a police department website prior to the issuance of an expungement order along with any press release or other notices to the media pursuant to FOIA, a law enforcement agency is not required to remove or delete the reports from their website simply because such news reports concern a charge for which an expungement order is issued. Even if it were to be expunged from the police department website, arguably, it could be found through a “google” search. However, because the reports and press releases could be used to circumvent the expungement laws, we would advise out of an abundance of caution that law enforcement agencies remove from their website agency-generated statements or press releases concerning criminal charges for which an expungement order has been issued. *Op. S.C. Att’y Gen.*, 2014 WL 1511517 (April 10, 2014).

Where a request for an incident report is made regarding an alleged sexual assault committed by one minor child against another, § 63-19-2030(A) specifies that law enforcement records involving

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juveniles are confidential. Section 30-4-40(a)(4) exempts matters that are specifically exempted from disclosure by statute or law, it would appear that such an incident report would be exempt. However, § 63-19-2030(B) states that while the information identifying a child must not be open to public inspection, the remainder of these records are public information. Therefore, the incident report may be released as long as the identifying information of the juvenile subject and the juvenile victim are redacted. Op. S.C. Att’y Gen., 2013 WL 6924891 (Dec. 30, 2013).

Section 30-4-40(a)(13), which requires a public body during an employment search to make available not fewer than the final three applicants, applies to an individual government employee who is responsible for filling a position. ‘Public body’ for purposes of FOIA encompasses the entity en bloc, including any officer or employee of the public entity. The provision cannot be construed to exclude materials gathered during a search to fill a position within the public entity simply because the hiring decision is made by someone who is not a member of the entity’s governing body.

The term “final” in § 30-4-40(a)(13) refers to the last group of applicants, with at least three members, from which the employment selection is made. The fact that a public employer has to disclose information regarding an employment search does not in any way force the employer to officially name three finalists. The statute simply requires a public employer to disclose material relating to a larger group of applicants if it chooses to name one or two “finalists.” Op. S.C. Att’y Gen., 2013 WL 1695511 (March 4, 2013).

Sections 30-4-40(a)(2) and 30-4-40(a)(3) respectively provide an exception for personal information that would be an unreasonable invasion of privacy if disclosed to the public, and for law enforcement records under certain circumstances. However, the exceptions do not apply to a family requesting the release of 911 conversations regarding a family member since there is no absolute prohibition under FOIA to releasing 911 conversations and there is no basis for exemption in a given situation. In this instance, the family could waive the release of the personal information of the family member and there was no applicable law enforcement exception. Op. S.C. Att’y Gen., 2010 WL 2320805 (May 17, 2010).

A list of school district employees, including teachers and administrators who make over \$50,000 a year, is not exempt under § 30-4-40 and should be disclosed. This would include those who have retired and entered the TERI program and also those who have completed the TERI program and are employed on a contractual basis. Op. S.C. Att’y Gen., 2010 WL 2320803 (May 12, 2010).

An amendment to a statute may remove an exemption that would normally be applicable under § 30-4-40(a). In this instance, § 50-21-130(D), dealing with the Department of Natural Resources (DNR) boating accident reports specifically indicated that such reports “shall not be open to public inspection.” In 2008, the public inspection prohibition was deleted and there is no longer a basis for preventing public release of DNR boating accident reports. Op. S.C. Att’y Gen., 2010 WL 928443 (Feb. 24, 2010).

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. Op. S.C. Att’y Gen., (2007 WL 4284631 (Nov. 7, 2007). *Cross Reference: Documents related to an out-of-court settlement, see Rule 41.1(c) South Carolina Rules of Civil Procedure.*

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's 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. Op. S.C. Att'y Gen., 2007 WL 4284629 (Nov. 6, 2007).

A sheriff's office is required 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. 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. Op. S.C. Att'y Gen., 2006 WL 1574915 (May 23, 2006).

Incident reports are generally considered to be public information but pursuant to § 30-4-40 law enforcement agencies have the discretion to exempt from disclosure certain information. For example, § 30-4-40(a)(3)(A) states that information is exempt from disclosure if it is determined that the information would endanger the life, health, or property of any person. Consistent with the recognized rights of victims in this state to be protected and the above FOIA provisions, the Attorney General advises "against the casual release of the names of juvenile victims to the public." Op. S.C. Att'y Gen., 2006 WL 1376904 (May 5, 2006).

Certain criminal record information may be considered confidential pursuant to § 30-4-40(a)(3). The provisions of § 4-9-33 require that criminal records databases and other similar restricted databases related to law enforcement functions remain separate and under the supervision of the sheriff. Such supervisory requirement by a sheriff is in keeping with FOIA provisions that restrict public accessibility to certain law enforcement records and documents. Op. S.C. Att'y Gen., 2006 WL 1207277 (April 20, 2006).

Local boards distributing allocated funds for emergency food and shelter through the Federal Emergency Management Food and Shelter Program (EFSP) may collect and view the names of recipients of these funds to prevent fraudulent "duplication." Disclosure of the names serves an important public interest by providing valuable information as to who receives funds and how those funds are distributed. "A court would likely conclude that the intrusion upon the privacy interests of recipients of EFSP assistance is 'de minimus' rather than 'clearly unwarranted'" since only the names of the recipients are disclosed by the nonprofit agencies to the local boards. Op. S.C. Att'y Gen., 2005 WL 1383358 (May 18, 2005).

Section 30-4-30(a) provides that "any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40..." The term "person" is defined as "any individual, corporation, partnership, firm, organization or association" by § 30-4-20(b). Assuming a particular state agency fits within the definition of a "person," that agency could make a request for information from public bodies pursuant to the Act. A similar determination of a "person" could be made as to a particular municipal agency authorizing one agency to request and receive information from another agency where permitted. Therefore, sharing of information between a municipal police department and a clerk / treasurer's office for official purposes and the enforcement of codes is permitted. Op. S.C. Att'y Gen., 2004 WL 3058229 (Dec. 16, 2004.)

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Generally, the records concerning the discipline of a police officer are not exempt from disclosure under the “personal privacy exemption” contained in Section 30-4-40(a)(2). Such records, including the names of those officers disciplined, are not exempt because they relate to matters of “legitimate public concern” rather than “personal privacy” in one’s private life. Even though there is no blanket exception afforded to records of disciplinary action taken by a law enforcement agency or other public body, there may be particular exemptions such as the protection of one’s social security number. Op. S.C. Att’y Gen., 2004 WL 323937 (Feb. 4, 2004). See also *Burton v. York Sheriff’s Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct.App. 2004).

Section 17-1-40 requires the destruction of certain criminal records. If a criminal charge is dismissed or the person is found innocent, the arrest and booking record, files, mug shots, and fingerprints must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county or state law enforcement agency. Section 30-4-40(a)(4) exempts from disclosure any matter specifically exempted by statute or law. Therefore, Section 17-1-40 is an exemption from the FOIA. However, arrest warrants are disclosable under FOIA. Information contained in an arrest warrant, which is exempt from disclosure by §§30-4-40 and 30-4-70 or others statutes, should be deleted prior to disclosure. Criminal convictions and sentences are also matters of public record. Op. S.C. Att’y Gen., 2001 WL 129348 (Jan. 10, 2001).

Records expunged by court order pursuant to §22-5-910 are exempt from disclosure under FOIA. Op. S.C. Att’y Gen., 2001 WL 129348 (Jan. 10, 2001).

An expungement order granted under § 17-22-150, dealing with the disposition of charges against offenders accepted into an intervention program, would not require an agency to destroy the personnel records pertaining to the incident. This includes the agency’s internal investigation of the incident. In a footnote to this opinion, the Attorney General’s Office stated that whether the documents contained in the agency’s personnel file are subject to disclosure under FOIA would depend on the information contained in the specific document. Such internal investigations are not subject to a *per se* exclusion. See *City of Columbia v. American Civil Liberties Union of SC*, 323 S.C. 384, 475 S. E. 2d 747 (1996), but, specific items may qualify for an exemption pursuant to § 30-4-40. See, *Beattie v. Aiken County Dept. of Social Services*, 319 S.C. 449, 462 S. E. 2d 276 (1995). Op. S.C. Att’y Gen., 2000 WL 33120655 (Dec. 13, 2000).

Pursuant to Section 30-4-40(b), if a public record contains material which is exempt pursuant to S.C. Code § 6-1-120, the public body must separate the exempt and nonexempt material and make the nonexempt material available. Thus, a county council would be entitled to redact information in the record of appeal in a matter involving a local government tax matter prior to allowing inspection or production of the record. This opinion advises that in *The State-Record Co., Inc. v. City of Columbia*, the circuit court declared that Section 6-1-120(A) “must be read to preclude disclosure of financial information contained in business license applications. The court concluded that defendant’s failure to provide public access to the non-financial information contained in business license applications, including specifically, the name of the applicant, and the name, location and type of business, was a violation of the FOIA.” The court ordered the defendant permanently restrained and enjoined from withholding public access to the non-financial information contained in a business license application. Op. S.C. Att’y Gen., 2000 WL1205927 (June 28, 2000).

Sections 30-4-50 (8) and 30-4-40(3) do not, in and of themselves, require a law enforcement agency to delete suspect information from an incident report prior to release under the FOIA. The fact that an investigation is ongoing, a warrant has not been issued, or the suspect has not been



convicted would not alter this conclusion. However, the law enforcement agency is required to determine on a case-by-case basis whether a particular incident report contains information that is exempt from disclosure pursuant to another provision of the Code. Section 30-4-40(3) gives law enforcement agencies the discretion to exempt from disclosure materials which satisfy the requirements listed therein. Incident reports are public records and subject to disclosure. Op. S.C. Att’y Gen., 1999 WL 1893881 (June 17, 1999).

Public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under Act. Op. S.C. Att’y Gen., 1993 WL 439034 (Sept. 30, 1993). *[Ed. Note: Under § 30-4-50(A)(1) a public body must disclose this information.]*

Telephone bills of a public agency are considered public records. Section 30-4-40(a)(2) would not present valid reason, absent some specific showing to the contrary, to withhold telephone billing records. Op. S.C. Att’y Gen., 1993 WL 720090 (March 18, 1993).

Section 50-21-410 appears to prohibit the SC Wildlife & Marine Resources Department releasing information from vessel numbering system records under an FOIA request when the request is not related to boating safety. Op. S.C. Att’y Gen., 1992 WL575649 (Aug. 5, 1992).

Whether to disclose any portion of an application for licensure as a proprietary school, such as financial reports, is a decision to be made by the Commission on Higher Education on a case-by-case basis. Op. S.C. Att’y Gen., 1992 WL 575629 (April 28, 1992).

Where legal counsel to Audit Council has been employed in dual capacity as both legal counsel and auditor there would be no distinction in work done as auditor and work performed as attorney under either the Act or Rules of Professional Conduct governing confidentiality of attorney’s work product. Op. S.C. Att’y Gen., 1991 WL 474734 (Jan. 18, 1991).

US Supreme Court’s decision concluded that each state may enact legislation authorizing disclosure of “rap sheets” to public. SLED’s regulation as to particular data to be disseminated is consistent with the Court’s ruling and present South Carolina law. Supreme Court has concluded that “rap sheets” may continue to be treated as in the past by SLED in accordance with SLED’s regulation. Op. S.C. Att’y Gen., 1990 WL 482403 (Jan. 24, 1990).

An arrest or bench warrant would generally be disclosable upon its being served upon the named person unless the information in the warrant is otherwise exempt under the Act; the custodian of criminal investigatory records has the discretion to disclose the records if he or she deems that it would not harm law enforcement or the investigation. Op. S.C. Att’y Gen., 1989 WL 406168 (Aug. 1, 1989).

The disclosability of prefiled indictments under the Act is to be determined by the clerks of the court, subject to judicial scrutiny. Op. S.C. Att’y Gen., 1989 WL 406106 (Feb. 23, 1989).

Salary survey information of various local governmental employees maintained in a data base by the Council of Governments may be released under the Act. Drafts of actual salary studies should not be released until the drafts are made available to the client jurisdiction or otherwise distributed. Salary information of an entity not classified as a public body, in the possession of a public body such as the Council, would not be subject to the compensation disclosure requirements of § 30-4-40(a)

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(6). However, because the disclosure of a private employee's salary could constitute an invasion of privacy with respect to his financial affairs and because the information may be protected by an exemption under FOIA, consultation with the private sector firm prior to disclosure of such salary information is recommended. Op. S.C. Att'y Gen., 1988 WL 383525 (May 26, 1988).

The Act does not address whether or not individuals should be notified when there is a FOIA request for release of their salary. Inasmuch as the disclosure of residence addresses or telephone numbers could constitute an unreasonable invasion of personal privacy, a determination as to disclosure under FOIA of residence addresses and telephone numbers must be made on a case by case basis. To the extent this opinion is inconsistent with opinions dated January 25, 1978, and August 5, 1977, this opinion as to the release of home addresses and telephone numbers of state employees will be deemed to be controlling. An individual's Social Security number should most probably not be disclosed pursuant to a FOIA request. Information such as where a state employee was housed while traveling on state business would be information from a voucher and thus subject to disclosure unless exempt for a reason defined under § 30-4-40. The determination must be made on a case-by-case basis. While FOIA does not appear to prohibit the release of information over the telephone, it is advisable to provide responses to FOIA requests in written form to lessen the chances of misunderstanding and to provide an accurate record of the information provided. Because the definition of "department head" is quite broad, a request for the disclosure of the salary for a particular individual should be referred to the agency which employs the individual to determine whether or not the individual occupies a "department head" position. Op. S.C. Att'y Gen., 1987 WL 245477 (July 18, 1987).

Because the Act was designed to encourage the disclosure of public records and contains no specific provision dealing with the enforcement of confidentiality, by either criminal or civil remedies, the release of a settlement agreement which is confidential pursuant to § 42-19-40 is not enforceable under FOIA. Op. S.C. Att'y Gen., 1986 WL 192015 (May 13, 1986).

The confidentiality requirements of §§56-5-1340 and 56-5-1360 should be construed as being applicable only to accident reports made by individuals involved in an accident and are inapplicable to those reports filed by law enforcement officers. Accident reports filed by law enforcement officers pursuant to §56-5-1270 are not confidential. Op. S.C. Att'y Gen., 1986 WL 191985 (Feb. 13, 1986).

Court would probably find that ad hoc citizens committee appointed by town council to be a public body subject to the Act. Op. S.C. Att'y Gen., 1984 WL 159931 (Oct. 26, 1984).

The legislative delegation is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority to approve a budget. Once a meeting is

required, FOIA would probably be deemed applicable requiring meeting to be public unless specific exemption is applicable. Op. S.C. Att'y Gen., 1984 WL 159918 (Sept. 6, 1984).

Incident reports used by campus police to report activities occurring within Department of Mental Health which may have criminal implications and which contain patient identities are public information but to the extent that it contains confidential information the information is exempt from disclosure under FOIA. Op. S.C. Att'y Gen., 1984 WL 159892 (July 24, 1984).

The Department of Social Services may release copies of cost reports filed by provider nursing homes under Title XIX of Social Security Act (Medicaid) to the public without violating either state or federal FOIA, privacy right, or property right of provider nursing home services. Op. S.C. Att’y Gen., 1984 WL 159886 (July 20, 1984).

A final order or opinion issued in disciplinary proceeding by a state licensing board or agency is public information. Op. S.C. Att’y Gen., 1984 WL 159868 (May 25, 1984).

Certain public funds maintained by State Workers’ Compensation Fund do not appear to be confidential and are subject to disclosure under the Act, unless exempt under provision of § 30-4-40. Op. S.C. Att’y Gen., 1984 WL 159860 (May 10, 1984).

Department of Mental Health records which identify patients or ex-patients are confidential by law and are not subject to disclosure pursuant to Act. Op. S.C. Att’y Gen., 1984 WL 159830 (Feb. 24, 1984).

The Act does not require a public body to prepare and furnish a list that reflects information extracted from public records. Op. S.C. Att’y Gen., 1981 WL 96546 (March 13, 1981).

**§ 30-4-45. Information concerning safeguards and off-site consequence analysis; regulation of access; vulnerable zone defined.**

(A) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 “Distribution of Off-site Consequence Analysis Information”, or 10 CFR 73.21 “Requirements for the protection of safeguards information”, must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

- (1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and
- (2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, “vulnerable zone” is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

## § 30-4-50

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

HISTORY: 2002 Act No. 339, § 30.

### PRACTICE POINTERS

Section 30-4-40(c) provides for access to restricted information on certain hazardous air pollutants subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 "Distribution of Off-Site Consequence Analysis Information," or 10 CFR 73.1 "Requirements for the protection of safeguards information," the unrestricted access to which could increase the risk of acts of terrorism. Section 30-4-45 requires an agency that is the custodian of such information to promulgate regulations to regulate access to this information. Pursuant to this provision, DHEC promulgated Regulation 61-117 which went into effect on May 25, 2012. It identifies who can have access to restricted information as well as the procedures for the release of restricted information.

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

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

- (1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;
- (2) administrative staff manuals and instructions to staff that affect a member of the public;
- (3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;
- (5) written planning policies and goals and final planning decisions;
- (6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;
- (7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;
- (8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the

report;

(9) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle-mounted recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.

(a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested with fifteen days (excepting Saturdays, Sundays, and legal holidays) of the receipt of the request for disclosure and the hearing shall be held in camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then release, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

(10) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

HISTORY: 1978 Act No. 593, § 6; 1982 Act No. 370; 1992 Act No. 269, § 1; 1993 Act No. 44, § 1; 1998 Act No. 423, § 7; 2017 Act No. 67, § 3.

## PRACTICE POINTERS

Paragraph (B) of § 30-4-50 prohibits commercial solicitation of persons whose identity was obtained from a police incident report or an employee salary schedule obtained under a FOIA request. The home address and home telephone number of an employee or officer of a public body revealed in response to a FOIA request may not be used for commercial solicitation. A public body's office policy may include requirements to ensure compliance with the commercial solicitation prohibition when a FOIA request is received from a person known, or reasonably suspected to be, soliciting information for such use.

## CASE NOTES

Findings of fact and conclusions of law in the final order of the state board of medical examiners, which suspended a physician for misconduct, was public information and publication of the findings would not be enjoined. *Ewing v. State Bd. of Medical Examiners*, 290 SC 89, 348 S.E. 2d 361 (1986).

## 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. *Op. S.C. Att'y Gen.*, 2008 WL 1960277 (April 2, 2008).

A public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under the Act. *Op. S.C. Att'y Gen.*, 1993 WL 439034 (Sept. 30, 1993).

Except for commercial solicitation, the Act does not limit how a requestor may use public information obtained pursuant to the Act. Consideration should be given to ethics and election laws if information obtained under the Act is to be used in a political campaign. *Op. S.C. Att'y Gen.*, 1993 WL 439034 (Sept. 30, 1993).

Accessing home addresses and telephone numbers of officers and employees of a public body for use by a nonprofit professional organization for membership recruitment and similar activities does not, on its face, appear to fall within the definition of "commercial solicitation." Of course, the public body to whom such a request is presented would ultimately make the determination as to whether a particular activity would constitute "commercial solicitation" or to release any records under the recent amendments to the Act. *Op. S.C. Att'y Gen.*, 1992 WL 575626 (April 14, 1992).

Information such as where a state employee was housed while traveling on state business would be information from a voucher and thus subject to disclosure unless exempt for a reason defined under § 30-4-40. The determination must be made on a case-by-case basis. *Op. S.C. Att'y Gen.*, 1987 WL 245477 (July 16, 1987).

A final order or opinion issued in disciplinary proceedings by a state licensing board or agency is public information. Op. S.C. Att’y Gen., 1984 WL 245477 (July 26, 1984).

Incident reports used by Department of Mental Health campus police to report activities which may have criminal implications and contain patient identities are public information, but to extent that it contains confidential information, the information is exempt from disclosure under FOIA. Op. S.C. Att’y Gen., 1984 WL 159892 (July 24, 1984).

Records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. Op. S.C. Att’y Gen., 1977 WL 24628 (Sept. 14, 1977).

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to §37-6-117, and the complaint is later determined to be groundless, the Administrator is not required to release the information. Op. S.C. Att’y Gen., 1977 WL 24473 (May 2, 1977).

**§ 30-4-55. Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.**

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

- (a) the offered incentive or expenditure is accepted, and
- (b) the project has been publicly announced or an incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. Notwithstanding the requirements of this section, information that is otherwise exempt from disclosure under Section 30-4-40(a)(1),(a)(5)(c),and(a)(9) remains exempt from disclosure.

HISTORY: 2003 Act No. 86, § 3.

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

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.

HISTORY: 1978 Act No. 593, § 7.

### PRACTICE POINTERS

All meetings are open to the public. Only portions of a meeting specified in § 30-4-70 may be closed to the public. Meetings in general are discussed in § 30-4-20 and the practice pointer following. Note that there is a special statute for procedures relative to adopting ordinances at S.C. Code § 4-9-120.

There are two other specific statutes applicable to council meetings and notice thereof. Section 4-9-130 speaks to the requirements for public hearings with public notice concerning specific financial matters to be taken up by council at § 4-9-130. Section 6-1-80 supersedes FOIA and § 4-9-130 as they relate to the form of public notice required to adopt the county budget. Both statutes are reprinted in the Appendix.

### CASE NOTES

A review committee composed of city staff members organized by the city manager to evaluate RFPs and advise the city manager on the award of a contract was held to be a public body (an advisory committee) within the meaning of “public body” in Section 30-4-20(a). It did not matter that the members of the committee were not members of the city council. The fact that the committee was set up to give the city manager and ultimately the city council advice made the review committee an advisory committee covered by the open meetings laws in the FOIA. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E. 2d 862 (2001).

A balancing test must be used to determine whether a public body’s meeting place complies with the provisions of §30-4-15, which requires 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).

Meetings may be conducted outside of municipal boundaries. The Court of Appeals in construing the “minimal cost or delay” provision in § 30-4-15 adopted a balancing test weighing the interests of the public against the government’s need to conduct a meeting at a distant site. The Supreme Court affirmed the use of a balancing test but reversed and remanded the case for further findings. To determine if a meeting complies with the “minimum cost or delay” requirements in § 30-4-15, the interests of the municipality in conducting a meeting outside the municipal limits should be weighed against the cost or delay to the public. *Wiedemann v. Town of Hilton Head*, 326 S.C. 573, 486 S.E. 2d 263 (Ct. App. 1997); affirmed in part but reversed with directions to take additional evidence to determine if the test was met. 330 S.C. 532, 500 S.E.2d 783 (1998).

### ATTORNEY GENERAL’S OPINIONS

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. Op. S.C. Att’y Gen., 2008 WL 2324810 (May 6, 2008).

Meetings of public bodies 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 via conference call. Op. S.C. Att’y Gen., 2007 WL 1651329 (May 18, 2007).

Telephonic and electronic meetings must comply with all the provisions of FOIA. This includes the provision set forth in § 30-4-60 that all meetings of a “public body” shall be open to the public. This also includes the provisions set forth in § 30-4-80 and § 30-4-90 that require giving notice of the meetings and keeping minutes of the meetings. It is recommended that a speaker phone be placed in a conference room or other gathering place in the offices which would allow several persons to monitor what was taking place in the meeting and to communicate with members as needed. An ordinance outlining the procedures for telephonic meetings is not necessary since the requirements are outlined in the FOIA. An ordinance could not limit the FOIA. Op. S.C. Att’y Gen., 2005 WL 2250207 (Aug. 25, 2005).

A court would likely find that the Chester County Economic Development Board’s exercise of governmental functions establishes it as a public body under FOIA’s definition of “public body” at Section 30-4-20(a). Op. S.C. Att’y Gen., 2001 WL 265255 (Feb. 15, 2001).

Convening a meeting telephonically is permitted by the Act. Op. S.C. Att’y Gen., 2000 WL 1205954 (June 21, 2000).

The Real Estate Commission is a public body subject to the requirements of the Act. When the Real Estate Commission is operating as an appellate or quasi-judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or public session. Op. S.C. Att’y Gen., 1994 WL 136198 (March 31, 1994).

Using telephone poll to handle matters over which public body has authority would most probably not comply with Act. Rather, meeting of body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation so body may act collectively rather than its members acting individually and independently. Op. S.C. Att’y Gen., 1992 WL 575608 (Jan. 21, 1992).

The FOIA notice requirement should be followed by a public body which will reconvene from “recess” or “adjourned” meeting wherever such reconvened meeting will be held, anticipated to be held in executive session, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. Op. S.C. Att’y Gen., 1991 WL 474772 (June 28, 1991).

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The Act appears applicable to search committee of University of South Carolina, which committee is searching for or interviewing candidates to serve as head basketball coach of a university. Op. S.C. Att’y Gen., 1991 474772 (June 28, 1991).

School board would be required to interview candidates for position of superintendent in open or public meeting unless board voted to do so in an executive session. Op. S.C. Att’y Gen., 1991 WL 474744 (Feb. 27, 1991).

An advisory committee whose assigned task is information-gathering or advisory functions should not meet in executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. Op. S.C. Att’y Gen., 1988 WL 383514 (April 14, 1988).

A school improvement council would be considered to be a “public body” for purposes of the Act and subject to the requirements of the Act. Op. S.C. Att’y Gen., 1988 WL 383497 (Feb. 27, 1988).

No individual may be elected commissioner of a highway district unless he receives a favorable vote from a majority of members of the legislative delegation which comprises the district. The delegation may meet in executive session to discuss the appointment of a person to a public body although such a meeting in executive session is not required. Op. S.C. Att’y Gen., 1986 WL 192010 (April 15, 1986).

The parole board is a “public body” and, therefore, parole board meetings are subject to FOIA. Its meetings must be open to the public except for limited circumstances outlined in § 30-4-70 in which an executive session may be held. Therefore, the particulars of the parole of an individual would then be matters of public record. Op. S.C. Att’y Gen., 1985 WL 259229 (Oct. 30, 1985).

In absence of truly exigent circumstances, FOIA requires public body to give notice, in the manner prescribed, of time, place, date and agenda of its meetings. Notice is to be given as far in advance of the meeting as is practicable, but no less than 24 hours before meeting. Op. S.C. Att’y Gen., 1984 WL 159828 (Feb. 22, 1984).

### **§ 30-4-65. Cabinet meetings subject to chapter provisions; cabinet defined.**

(A) The Governor’s cabinet meetings are subject to the provisions of this chapter only when the Governor’s cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power.

(B) For purposes of this chapter, “cabinet” means the directors of the departments of the executive branch of state government appointed by the Governor pursuant to the provisions of Section 1-30-10(B)(1)(i) when they meet as a group and a quorum is present.

HISTORY: 2003 Act No. 86, § 6.

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

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.
- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.
- (3) Discussion regarding the development of security personnel or devices.
- (4) Investigative proceedings regarding allegations of criminal misconduct.
- (5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.
- (6) The Retirement System Investment Commission, if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C).

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, “specific purpose” means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(d) This chapter does not prohibit the removal of any person who willfully disrupts a

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meeting to the extent that orderly conduct of the meeting is seriously compromised.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

(f) The Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C).

HISTORY: 1978 Act No. 593, § 8; 1987 Act No. 118, § 6; 1998 Act No. 423, § 8; 1998 Act No. 371, § 7B; 1999 Act No. 122, § 4; 2005 Act. No. 153, Pt. IV, § 5.

### PRACTICE POINTERS

The reference to a “meeting closed to the public” means executive session. An executive session is conducted privately outside the presence of the public and press. Executive session may be requested by motion and conducted only for the purposes specified in this statute. The former practice of “ratifying” action taken in executive session has been abolished.

**Executive session procedure:** This statute specifies that a public motion and vote must be taken to go into executive session. If the body votes to go into executive session, the presiding officer is required to publicly announce the executive session’s specific purpose. Specific purpose is defined at paragraph (b) of this section and means a “description of the matter to be discussed as identified in items (1) through (5) of subsection (a)” of this section. If the matter at issue concerns item (1), employment matters of a specific person, or item (5), business recruitment / economic development, the identity of the person or entity being discussed need not be publicly announced.

The only action allowed to be taken in executive session is to adjourn or return to public session. Deciding on a course of action by polling members in executive session is prohibited.

While there is no bright line test for what needs to be announced before a public body goes into executive session, the case of *Donahue v. City of North Augusta* makes it clear that a public body has to state more than “contractual matter, employment matter, or legal advice.” Section 30-4-70(a) (1) through (5) lists the specific purposes for which a public body can go into executive session. We would advise public bodies to use the specific language in the statute and be as specific as possible as to the purpose of the executive session.

Even though the city used language directly from the statute, their announcement for executive session was not specific enough because they did not state what the contractual matter was pertaining to. Here is an example of announcing the specific purpose of an executive session: A public body announces the purpose for going into executive session is to discuss an employment matter in the administrator’s office.’ Not only did the public body give one of the statutory purposes for the executive session (an employment matter), it also specified the department involved without naming the party or parties. This type of specificity may present a challenge for smaller counties where an office or department may consist of one or two employees because announcing an employment matter involving a particular department would have the effect of revealing the employee’s identity. It may also make it more difficult for counties to comply with confidentiality requirements during negotiations with companies.

Upon conclusion of executive session and returning to public session, it is prohibited to “ratify action taken in executive session.” The appropriate statement consists of a motion and vote in public session to direct staff to take the course of action discussed in executive session. For example, the statement: “I move to authorize staff to negotiate the contract within the limits discussed in executive session,” is appropriate. However, before a contract can be entered into, the contract’s details must be disclosed and voted on in public session. For example, at the conclusion of a public session discussion of a pending contractual matter, a member may move “to purchase the property for \$1,000.00 so that a new correctional facility can be built on the site.”

**Executive session is permitted only to:**

**Discuss employment matters ¶ 1.** The statement: “ We are going into executive session to discuss the employment of an executive director,” is suitable. Current or potential employee names do not have to be stated. If the employment matter concerns an adversarial hearing about an employee or client and the employee or client requests a public hearing then a public hearing must be granted.

**Discuss contract negotiations and receive legal advice ¶ 2.** Discussions about contracts, sales and purchases, and receipt of legal advice may be conducted in executive session. Receipt of legal advice in executive session is permitted if the legal advice relates to a pending, threatened, or a potential claim or other matters covered by the attorney-client privilege. A contract, once entered into, is a matter of public record. Only matters relating to a potential claim or discussions about an adversarial relationship arising from a contract may be discussed in executive session. Other matters arising from a contractual relationship concerning performance or simple status reports should be discussed during public session.

For example, “We are going into executive session to receive legal advice about a pending law suit,” is suitable. After leaving executive session, the body must vote in public to commit to any particular course of action. For example, “I move to authorize the attorney to respond to the legal action discussed in the manner specified,” sufficiently records in public the action discussed in private.

**Discuss security measures ¶ 3.** Discussions about security measures proposed or taken, security personnel or devices may be conducted in executive session. To commit to any course of action, a public vote must be taken.

**Discuss crimes and offenses ¶ 4.** Discussions about alleged criminal wrongdoing, investigative proceedings about allegations of criminal misconduct, and discussions about matters that may lead to criminal prosecution may be conducted in executive session. To commit to a course of action, a vote must be taken in public session.

**Discuss matters concerning economic development ¶ 5.** Discussions about the proposed location, expansion, or the provision of services encouraging location or expansion of business in the area served by the public body is permitted to be conducted in executive session. To commit to a course of action, a vote must be taken in public session. However, a vote on a contract or the sale or lease of real property must follow the procedures in § 4-9-130, which requires a public hearing.

**Chance meetings and disruptive behavior.** Subparagraph (c) of this section prohibits committing to a course of action at a chance meeting, a social meeting, or by electronic communication which is not the subject of public notice and made open to the public. Subparagraph (d) permits a public

## § 30-4-70

body to remove a person who “wilfully disrupts” a public meeting if the orderly conduct of the meeting is seriously compromised.

### CASE NOTES

Although a town council could not have known what action it would take - to include on an agenda – prior to discussing the relative legal issues and personnel matters during executive session, the council violated § 30-4-70(a)(2) when it announced that it was going into executive session at a special called meeting for the purpose of discussion of a “proposed contractual matter.” (Note: It might be useful to note on a public body’s agenda that action may be taken in open session on a matter discussed in executive session). FOIA is clear in its mandate that the “specific purpose” of the session “shall be announced.” FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private. The statute clearly mandates the specific purpose of the session must be announced. *Donahue v. City of North Augusta*, 412 S.C. 526, 773 S.E.2d 140 (2015).

A town council violated § 30-4-70(b) because announcing it would discuss “legal matters” or obtain “legal advice” on a particular issue was an insufficient announcement when town council obtained individual attorneys for “all lawsuits now and in the future” as a result of the executive session discussion. *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 767 S.E.2d 203 (Ct. App. 2014).

Former tax assessor could not rely on alleged violations of the FOIA by county administrator and council to seek damages for her termination. Although the Court of Appeals erred in finding the FOIA claim was properly before it, the Court affirmed the conclusion reached in the analysis by the Court of Appeals holding that the assessor could not prevail on her FOIA claim. *Antley v. Shepherd*, 349 S.C. 600, 564 S.E.2d 116 (2002).

If a public body votes to go into executive session, the presiding officer must publicly announce the executive session’s specific purpose. Specific purpose is defined as a “description of the matter to be discussed” identified by one of the following: (1) discussion of employment matters; (2) discussion of contract negotiations and receipt of legal advice; (3) discussion of security matters; (4) discussion of crimes and offenses; and (5) discussion of matters concerning economic development. Failure to announce the specific purpose of an executive session is a violation of the FOIA. Finding that the city violated the FOIA by failing to state a specific purpose for the executive session, the court remanded the case for a determination of relief, if any, available to Plaintiff. Although prior decisions have held that a technical violation of the FOIA can be cured by substantial compliance with the FOIA, the court held here that failure to state a specific purpose is more than a “technical violation” which can be remedied by substantial compliance with the FOIA. The court held that FOIA’s requirement to state the specific purpose of an executive session is not satisfied merely because citizens have some idea of what a public body might discuss in private. The exact purpose of the executive session must be publicly announced before going into executive session. *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001).

In a case involving a former tax assessor who filed action for a public policy tort, wrongful discharge, and violation of FOIA against the county and county administrator, the Court of Appeals held that the tax assessor could not rely on an alleged violation of FOIA by the administrator and the county council to seek damages for her termination. The tax assessor argued the county’s

policy, which was the subject of the suit, was made during an executive session of county council and was null and void because it was made in violation of FOIA. Therefore, according to the tax assessor, any decisions arising from the policy, including her termination, were likewise null and void. The court rejected the argument. The court stated that it could not discern from the record whether the county's policy was made by the county council in executive session, by council and the administrator in informal discussions, or by the administrator alone. However, the court stated that the answer was unimportant because FOIA is designed to "protect the public in general, not any individual in particular." Whether the initial policy was developed in violation of FOIA was found irrelevant to the question of whether the tax assessor's termination violated public policy. [The tax assessor did not argue she was terminated for exposing FOIA violations and the court did not address whether such a termination would give rise to a cause of action under the public policy exception.] The court found that if county council took action in violation of FOIA, the tax assessor could have filed an action under FOIA seeking disclosure. She could not rely on the alleged FOIA violation to seek damages for her termination. *Antley v. Shepherd*, 340 S.C.541, 532 S.E.2d 294 (Ct. App. 2000).

### ATTORNEY GENERAL'S OPINIONS

While there is no substantive right to discipline a municipal council member based on § 5-7-250(b), which permits council members to determine its own rules and order of business as well as § 30-4-70(d), a provision of FOIA providing that "this chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised" - such provisions do provide support that the inherent power to discipline exists. Therefore, we believe a municipal council does possess the power to discipline one of its own members by removal from a meeting as an inherent legislative power. Op. S.C. Att'y Gen., 2016 WL 3355910 (May 31, 2016).

A committee appointed by a town mayor cannot meet in private to discuss potential contractual arrangements between the town and a non-profit organization in an effort to make recommendations to the town, regardless of whether or not the town's attorney is present for that meeting. Although the proposed committee's discussions might concern a potential contractual arrangement between the town council and the non-profit organization, "discussion of negotiations incident to proposed contractual arrangements" under § 30-4-70(a)(2) may not be invoked as a reason to meet in executive session by a public body that is not a party to the proposed contract or actually involved in negotiating the contract. Op. S.C. Att'y Gen., 2013 WL 1931657 (April 30, 2013).

A county board of zoning appeals cannot go into executive session for the purposes of discussing the individual views of board members so as to attempt to find a consensus among them that can become the basis for their written decision. However, they can go into executive session to receive legal advice from their attorney. Op. S.C. Att'y Gen., 2011 WL 782318 (Feb. 3, 2011).

A city fire department questioned whether a county rural fire board could: (1) enter into executive session to discuss a contract between two government bodies that they are not a party of; (2) take a straw poll while in executive session; (3) tell members the executive session would not end unless all members agree to support the motion; (4) discuss the issue via telephone or possibly email prior to the meeting; and (5) have a county councilman participate in the executive session and offer comments not consistent with the remaining members of the county council. It appears that the board violated § 30-4-70(a)(2). While that provision permits a closed meeting to discuss

## § 30-4-70

negotiations for a contract, the common understanding would be that one should be a party to that contract being discussed. The board also violated § 30-4-70(b) as members of a public body may not commit the public body to a course of action by polling or commit the public body to a course of action while in executive session. Furthermore, any telephone or email communication by board members violated § 30-4-70(c) as no chance meetings or electronic communication may be used to circumvent the spirit of the requirements of FOIA. However, no provision of FOIA prohibits a public body from permitting the presence of any person whom they may deem necessary or helpful in conducting their executive sessions. Op. S.C. Att’y Gen., 2010 WL 2320806 (May 25, 2010).

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. Circulating 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. Op. S.C. Att’y Gen., 2007 WL 1031442 (March 28, 2007).

The Clinton Newberry Natural Gas Authority, providing substantial cash flow to the two municipalities, would be considered a “public body” and required to comply with the Act. The Authority currently is not taking any formal action to make the distribution to the two cities. Section 30-4-70 requires that “no formal action may be taken in executive session” and that “no vote may be taken in executive session.” Such action may only be taken in open session. The Act defines “formal action” as “a recorded vote committing the body concerned to specific action.” Op. S.C. Att’y Gen., 2005 WL 774149 (March 10, 2005).

The statute makes clear that no actions may be taken in executive session even if they fall under one of the exceptions in § 30-4-70. Votes to adjourn or to return to public session are the only votes that may be made in executive session. Therefore, county council may not vote on matters concerning elected county officials or to obtain lease purchase agreements in executive session. Generally, the instances where executive session is proper to discuss issues regarding elected county officials and their departments will be few. Section 30-4-70(a)(1) may apply if the discussion is related to discipline, compensation, or promotion of a county employee or any other person who is regulated by the council. Subsection (a)(4) may apply if a county official, or an employee within their department, is under some sort of criminal investigation. Likewise, a discussion of lease purchase agreement negotiations on property acquisitions may fall under the language of § 30-4-70(a)(2). Other contractual negotiations with outside parties and legal questions related to the financial negotiations, directed to the county attorney, may also need to be held in executive session. However, these exceptions should be construed narrowly and county council should articulate the reason why the particular issue cannot be taken up in public session. Op. S.C. Att’y Gen., 2004 WL 736933 (March 10, 2004).

It is not clear from § 2-15-61 whether the General Assembly intended to empower the Legislative Audit Council to require access to an agency’s executive sessions when conducting an audit of that agency. Typically, in other states, the auditor or an auditing agency is given explicit and express authority to enter the executive sessions of the public body which is being subjected to the audit. (W)e would nevertheless suggest that the agency provide such access. Op. S.C. Att’y Gen., 2002 WL 1340419 (April 26, 2002).

A county adopted an ordinance creating a planning commission conforming to the model ordinance in the *Comprehensive Planning Guide for Local Governments*, published by the Municipal



Association and the Association of Counties. The Attorney General's Office cites the ordinance's provision for the removal of a member for cause. The county's version provided that members of the Planning Commission may be removed at any time by county council for cause. The existence of cause shall be discussed by county council in executive session as permitted by § 30-4-70(a)(1), and the determination of removal shall be by vote in public session declaring a vacancy without a statement of cause." Op. S.C. Att'y Gen., 1999 WL 626618 (July 1, 1999).

The Real Estate Commission is a public body subject to the requirements of the Act. When the Real Estate Commission is operating as an appellate or quasi-judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or public session. Op. S.C. Att'y Gen., 1994 WL 136198 (March 31, 1994).

Using telephone poll to handle matters over which public body has authority would most probably not comply with the Act. Rather, meeting of the body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation so body may act collectively rather than its members acting individually and independently. Op. S.C. Att'y Gen., 1992 WL 575608 (Jan. 21, 1992).

The FOIA notice requirement should be followed by public body which will reconvene from "recess" or "adjourned" meeting wherever such reconvened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. Op. S.C. Att'y Gen., 1991 WL 474772 (June 28, 1991).

The Act appears applicable to a USC head basketball coach search committee. Op. S.C. Att'y Gen., 1991 WL 474772 (June 28, 1991).

School board would be required to interview candidates for position of superintendent in open or public meeting unless board voted to do so in executive session. Op. S.C. Att'y Gen., 1991 WL 474744 (Feb. 27, 1991).

An advisory committee whose assigned task is information-gathering or advisory functions should not meet in executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. Op. S.C. Att'y Gen., 1988 WL 383514 (April 11, 1988).

An executive session is not appropriate for the discussion of issues causing conflict between a mayor and a city manager inasmuch as the matters to be discussed do not relate to those specified in § 30-4-70(a)(1). The Act mandates that the specific purpose of an executive session must be announced and an announcement that "personnel matters" will be discussed would not be sufficient under the Act. Op. S.C. Att'y Gen., 1988 WL 383492 (Jan. 26, 1988).

A public body is precluded from taking formal action or a vote except in public session. Because the distinction between purely procedural matters and "formal action" is often not clear, a public rather than secret vote should be taken if any doubt exists. Ad hoc committees or task forces appointed by the Mayor and City Council for information-gathering or advisory functions would be subject to the requirements of the Act. Op. S.C. Att'y Gen., 1988 WL 383489 (Jan. 14, 1988).

## § 30-4-80

No individual may be elected commissioner of a highway district unless he receives a favorable vote from a majority of members of the legislative delegations which comprise the district. The delegations may meet in executive session to discuss the appointment of a person to a public body although a meeting in executive session is not required. Op. S.C. Att’y Gen., 1986 WL 192010 (April 15, 1986).

In absence of specified number of members necessary to convene in executive session, a simple majority vote consisting of four members would be necessary for seven-member board to convene in executive session. Op. S.C. Att’y Gen., 1985 WL 165974 (Jan. 17, 1985).

A court would probably find that an ad hoc citizens committee appointed by town to be a public body subject to the Act. Op. S.C. Att’y Gen., 1984 WL 159931 (Oct. 26, 1984).

The legislative delegation is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority to approve a budget. Once a meeting is required, the FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. Op. S.C. Att’y Gen., 1984 WL 159918 (Sept. 6, 1984).

Town council must vote in public on the question of whether to enter into executive session. Op. S.C. Att’y Gen., 1983 WL 142720 (July 26, 1983).

Records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charges by the Residential Homebuilders’ Commission. Op. S.C. Att’y Gen., 1977 WL 24628 (Sept. 14, 1977).

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

(A) All public bodies, except as provided in subsections (B) and (C) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board or website, if any, public notice for any called, special, or rescheduled meetings. This requirement does not apply to emergency meetings of public bodies. Once an agenda for a regular, called, or special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours’ notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any

statutorily required public hearing.

(B) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

(C) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (A), must make reasonable and timely efforts to give notice of their meetings.

(D) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

HISTORY: 1978 Act No. 593, § 9; 1987 Act No. 118, § 7; 2015 Act No. 70, § 1.

### PRACTICE POINTERS

**Public notice of regular meetings:** At the beginning of each calendar year, written public notice of public meetings and agendas, if any, must be given to anyone who requests notice, the local news media and any other news media that request notice. Notice is provided by mailing the calendar of regularly scheduled meetings to newspapers, radio stations, and persons requesting notice. The notice (calendar) must state the date, time, place, and agenda for the meeting. Written public notice of rescheduled, special, or called meetings must also be provided to these same persons and organizations.

Section 30-4-80 requires agendas for all regular, called, special, or rescheduled meetings of public bodies. Agendas must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board and website, if any, public notice for any regular, called, special, or rescheduled meetings. Such notice must include the agenda, date, time, and place of the meeting, and must be posted as early as is practicable but not later than twenty-four hours before the meeting. This requirement does not apply to emergency meetings of public bodies.

Once an agenda for a regular, called, special, or rescheduled meeting is posted, no items may be added to the agenda without an additional twenty-four hours' notice to the public, which must be made in the same manner as the original posting.

After the meeting begins, an item upon which action can be taken may only be added to the agenda by a two-thirds vote of the members present and voting. However, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given, it may only be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the

## § 30-4-80

body that an emergency or an exigent circumstance exists if the item is not added to the agenda. An example of an exigent circumstance is where county council has to approve a matter in order to meet a deadline for a grant qualification. If this item was not on the posted agenda and council does not amend the agenda to address this matter, the county will lose the opportunity to obtain the grant. The Act does not change the notice requirements for matters that require a public hearing, such as the budget.

It may be helpful to ask those receiving meeting notices to provide self-addressed stamped envelopes. These envelopes will provide a contact name and can be used to provide notice of meetings in the future. Failure to receive a self-addressed stamped envelope will not excuse failure to provide public notice of a rescheduled, special, or called meeting.

Public notice for a special, called, or rescheduled meeting must be posted as soon as possible but no later than 24 hours before the meeting. The notice of a special, called, or rescheduled meeting must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings.

Public notice must be provided to the local news media. The local news media means newspapers of general circulation in the jurisdiction served. A newspaper of general circulation is a newspaper available without a subscription published or available in the area served by the public body. Some jurisdictions are also served by local radio stations.

**Public notice related to financial matters:** Section 4-9-130 requires a public hearing with at least 15 days' notice to the public before council action can be taken to adopt a budget or commit to other specified financial matters. This statute is in addition to FOIA but has also been superseded by the more specific provision at § 6-1-80. Section 6-1-80 provides that specified information must be included in the notice to the public of a public hearing before the adoption of a budget and specifies that notice must be given not less than 15 days in advance of the public hearing and must be a minimum of 2 columns wide with a bold headline. The balance of the statute provides what must be stated in the notice and specifies that this notice is in lieu of the requirements of § 4-9-130. The notice required under § 6-1-80 will require the assistance of the finance and property tax officials due to the requirement that financial figures appear in the notice.

**Charges for legal advertisements:** § 15-29-80 to § 15-29-100 provide specific laws relative to charges for legal advertisements in newspapers.

**Agenda:** An agenda for a regularly scheduled, called, special, or rescheduled meeting must be posted on a bulletin board at the office where the meeting will take place at least 24 hours before the meeting.

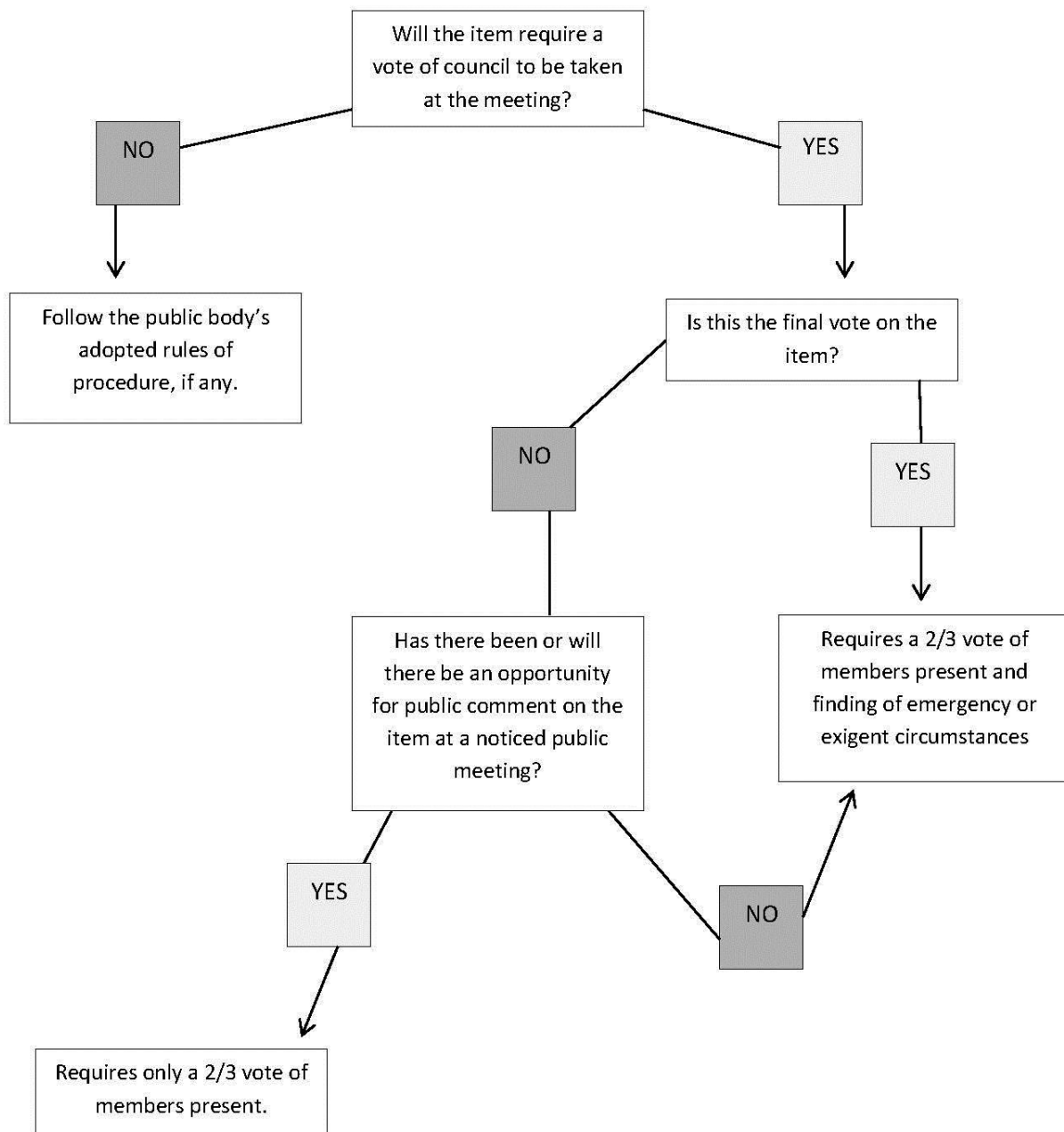
**Bulletin boards:** Section 30-4-80(A) provides that an agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body, and on a public website maintained by the body, if any, at least twenty-four hours prior to such meeting. It is unclear whether a meeting has to be rescheduled if the a public body cannot post an agenda electronically twenty-four hours prior to a meeting because the website is down, but they have physically posted the agenda at their meeting place at least twenty-four hours prior to the meeting.

**Meeting minutes:** The meeting minutes must include a statement of the efforts made to comply

with the public notice requirements mandated by the Act. § 30-4-80(E). Minutes of a meeting of a public body and all documents distributed to or reviewed by a member of the public body during a public meeting for the preceding six (6) months must be made available for public inspection and copying during the hours of operation of the public body. § 30-4-30 (D)(1) and (4). This would include any documents provided to the public body by presenters at the public meeting or members of the public. Counties can comply with this requirement by posting meeting minutes and public documents received or reviewed by a member of the public body during a public meeting on their website. §30-4-30(E). This section does not specify how soon after the public meeting the minutes and documents must be posted, but it is recommended that public bodies post this information as soon as practicable after the meeting. Be aware that there is a question as to whether drafted minutes that have not been approved by a public body are subject to FOIA. It would be a good practice to stamp the minutes as a “draft” regardless of whether a public body decides to release them prior to approval or chooses not disclose until the minutes are approved.

**Flowchart for Amending an Agenda**

(Source with amendments: SC Press Association’s *Open Government Guide for South Carolina*)



## § 30-4-90

### ATTORNEY GENERAL'S OPINIONS

The FOIA notice requirement should be followed by public body which will reconvene from "recess" or "adjourned" meeting wherever such reconvened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has a right to know where a meeting is and when it will be. Op. S.C. Att'y Gen., 1991 WL 474772 (June 28, 1991).

A public body must provide notice of all public meetings, whether scheduled, rescheduled, or called to local news media, persons, or organizations who may request to be notified. Generally, the public should be notified by the posting of a notice at the office or meeting place of the public body. Op. S.C. Att'y Gen., 1989 WL 406201 (Oct. 11, 1989).

Proper notice for a regularly scheduled meeting should be given by written public notice at the beginning of the calendar year and include the date, time, place, and agenda; called, special, or rescheduled meetings require notice at least 24 hours in advance which is to include the date, time, and place. The Act does not place responsibility on any entity to ensure that notification is received. Op. S.C. Att'y Gen., 1989 WL 406201 (Oct. 11, 1989).

In absence of truly exigent circumstances, FOIA requires public body to give notice, in manner prescribed, of time, place, date and agenda of its meetings. Notice is to be given as far in advance of meeting as is practicable, but no less than 24 hours before meeting. Op. S.C. Att'y Gen., 1984 WL 159828 (Feb. 22, 1984).

Public notice, as used in §4-9-110, is the same term as used in §30-4-80, and public notice requirements should follow the notice provisions of the Act. Op. S.C. Att'y Gen., 1983 WL 142734 (Sept. 1, 1983).

## § 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

- (1) The date, time and place of the meeting.
- (2) The members of the public body recorded as either present or absent.
- (3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
- (4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the

conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

History: 1978 Act No. 593, § 10; 2001 Act. No. 13, § 1.

### **PRACTICE POINTERS**

Written minutes of the public session of a meeting must be prepared and maintained. The Act is not clear on whether written minutes of executive session are required. While the Association of Counties has traditionally advised that written minutes of executive session are not required by the Act, there are differences of opinion in the legal community.

In addition to the matters required by this statute, § 30-4-80 requires that the minutes contain a statement of the efforts made to provide public notice of the meeting. The Ethics Act at § 8-13-700(B) requires the minutes contain a written statement of disqualification of any member required to disqualify under the Ethics Act. And, § 30-4-30(d) requires that the last 6 months of meeting minutes must be made available to any person who appears in person and requests copies of the minutes.

A person may record a public meeting by tape recorder or “other means of sonic reproduction” as long as it does not create active interference in the proceeding. This does not apply to executive session. A public body is not required to furnish or provide the recording device or facilities and the public body is not required to allow other means of recording.

### **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*, 379 S.C. 564, 666 S.E.2d 892 (2008).

### **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. Op. S.C. Att’y Gen., 2001 WL 790250 May 22, 2001).

Recording a public meeting of a public body by means of a home video camera would be permitted assuming that recording is done in a manner that is not disruptive to the public meeting. Recording public figures would not violate their right of privacy since, by virtue of their public service, they have voluntarily placed themselves before the public and they have relinquished part of their rights of privacy. Op. S.C. Att’y Gen., 1988 WL 383487 (Jan. 14, 1988).

## § 30-4-100

### § 30-4-100. Injunctive relief; costs and attorney's fees.

(A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking such relief under this section prevails, he may be awarded reasonable attorney fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.

HISTORY: 1978 Act No. 593, § 11; 1987 Act No. 118, § 8; 2017 Act No. 67, § 4.

#### PRACTICE POINTERS

If a citizen sues a public body for violation of the Act and wins, the action taken by the public body in violation of the Act can be invalidated by the court. It should be noted that a person or entity that is not a citizen of the state does not have standing to sue under FOIA.

There is a good faith exception for an award of attorney's fees. Section 30-4-110(D) states that if a public body determines that the records requested are not subject to disclosure and a court agrees, that determination serves as a good faith finding on the part of the public body and acts as a complete bar against attorney's fees if the court's determination is reversed on appeal.

#### CASE NOTES

A citizen has standing to bring a suit to invalidate a severance agreement between a county and its former administrator on the basis that it violated FOIA. The severance package was not placed on council meeting agenda where it was approved. The legislature has specifically conferred standing upon any citizen to bring a FOIA claim against a public body for declaratory or injunctive relief, or both under § 30-4-100(a). Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012).

Attorney's fees may be awarded pursuant to § 30-4-100, even though the information that is being requested is produced prior to a court determination on the release. When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur



litigation costs, the public body should not be able to preclude prevailing status to the citizen by producing the documents after litigation is filed. *Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 711 S.E. 2d 895 (2011).

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*, 374 S.C. 307, 649 S.E.2d 28 (2007). [*Editor's Note: Section 30-4-110(D) discussed above was amended to provide a good faith exception.*]

Section 30-4-100(a) states that "any citizen of the State" could apply for declaratory and injunctive relief and the FOIA plaintiff was not required to have a personal stake in the outcome. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006).

### § 30-4-110. Penalties.

(A) A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

(B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the court or to intervene in an action previously filed.

(C) If a person or entity seeking relief under this section prevails, the court may order:

- (1) equitable relief as he considers appropriate;
- (2) actual or compensatory damages; or
- (3) reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

(D) If the court determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the court's determination be reversed on appeal.

(E) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

(F) If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.

HISTORY: 1978 Act No. 593, § 12; 2017 Act No 67, § 5.

## § 30-4-160; § 30-4-165

### PRACTICE POINTERS

South Carolina had its first case of criminal charges against a public body for failure to comply with FOIA in 2011. Four members of a fire commission were issued courtesy summonses to face criminal charges in magistrates court for a violation of § 30-4-110. They were accused of willfully and intentionally holding an illegal meeting on June 16, 2010, by failing to give the required 24-hour notice, not taking proper minutes of the meeting, failing to notify the public, and by taking a secret vote at the meeting. Although there was an admission that the meeting in question was held in violation of FOIA, a jury court found the commissioners not guilty based on a finding that their actions were not willful. The case highlighted the difficulty of obtaining a criminal conviction under FOIA and is one of the main reasons the General Assembly changed the penalties from criminal to civil.

It is significant that a public body can now bring an action in circuit court under FOIA for unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests. While there are no guidelines in FOIA as to what a public has to demonstrate to prevail in such an action, FOIA does allow a public body to be awarded attorney's fee if they are the prevailing party.

It is also significant that any person with a specific interest in records or information being requested under FOIA can now independently file an action to protect that information or to intervene in a pre-existing action, such as a company doing business with the public body that does not want their confidential pricing model disclosed to its competitors.

### **§ 30-4-160. Sale of Social Security number or driver's license photograph or signature.**

- (A) This chapter does not allow the Department of Public Safety to sell, provide, or otherwise furnish to a private party Social Security numbers in its records, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card.
- (B) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

HISTORY: 1999 Act No.100, Part II, § 53.

### **§ 30-4-165. Privacy of driver's license information.**

- (A) The Department of Public Safety may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, photograph, or signature in any form that has been compiled for the purpose of issuing the person a driver's license or special identification card. The department shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.
- (B) A person's height, weight, race, photograph, signature, and digitized image contained in his driver's license or special identification card record are not public records.
- (C) Notwithstanding another provision of law, a private person or private entity shall

not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.

HISTORY: 1999 Act No. 33, § 1.

## APPENDIX

### **§ 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.**

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice. The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection.

HISTORY: 1962 Code § 14-3708; 1975 (59) 692.

### **§ 4-9-130. Public hearings on notice must be held in certain instances; adoption of standard codes or technical regulations and furnishing copies thereof; emergency ordinances.**

Public hearings, after reasonable public notice, must be held before final council action is taken to:

- (1) adopt annual operational and capital budgets;
- (2) make appropriations, including supplemental appropriations;
- (3) adopt building, housing, electrical, plumbing, gas and all other regulatory codes involving penalties;
- (4) adopt zoning and subdivision regulations;
- (5) levy taxes;
- (6) sell, lease or contract to sell or lease real property owned by the county.

The council may adopt any standard code or technical regulations authorized under § 6-9-60 by reference thereto in the adopting

## § 6-1-80

ordinance. The procedure and requirements governing the ordinances shall be as prescribed for ordinances listed in (1) through (6) above.

Copies of any adopted code of technical regulations shall be made available by the clerk of council for distribution or for purchase at a reasonable price.

Not less than fifteen days' notice of the time and place of such hearings shall be published in at least one newspaper of general circulation in the county.

To meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be designated as such and shall contain a declaration that an emergency exists and describe the emergency. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment.

HISTORY: 1962 Code § 14-3710; 1975 (59) 692; 1982 Act No. 351, § 1.

### PRACTICE POINTERS

This statute is applicable to council meetings in addition FOIA. It is important to note that the notice of the public hearing required before the adoption of the county budget contained in this statute, § 4-9-130, has been superseded by a more detailed notice provision in § 6-1-80. Section 6-1-80 provides more directions as to the form of public notice necessary when adopting the county budget. The public notice must contain several financial figures and estimates that will require the assistance of the finance and property tax officials.

### ATTORNEY GENERAL'S OPINIONS

A county wanted to know whether the granting of a utility easement by the county over real property that it owns should be authorized by ordinance in accordance with the provisions of § 4-9-130 and be treated as if it were a transfer of a fee simple interest in property. Given the binding effect that a transfer of a utility easement would have on the county and the fact that the transfer of an easement on the county's property constitutes a legislative act, an ordinance calling for such a transfer requires a public hearing. Op. S.C. Att'y Gen., 2009 WL 580557 (Feb. 17, 2009).

## § 6-1-80. Budget adoption.

(A) A county, municipality, special purpose or public service district, and a school district shall provide notice to the public by advertising the public hearing before the adoption of its budget for the next fiscal year in at least one South Carolina newspaper of general circulation in the area. This notice must be given not less than fifteen days in advance of the public hearing and must be a minimum of two columns wide with a bold headline.

(B) The notice must include the following:

- (1) the governing entity's name;
  - (2) the time, date, and location of the public hearing on the budget;
  - (3) the total revenues and expenditures from the current operating fiscal year's budget of the governing entity;
  - (4) the proposed total projected revenue and operating expenditures for the next fiscal year as estimated in next year's budget for the governing entity;
  - (5) the proposed or estimated percentage change in estimated operating budgets between the current fiscal year and the proposed budget;
  - (6) the millage for the current fiscal year; and
  - (7) the estimated millage in dollars as necessary for the next fiscal year's proposed budget.
- (C) This notice is given in lieu of the requirements of Section 4-9-130.

HISTORY: 1995 Act No. 146, § 9A.

#### 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 versus budgeted revenues and millage rates. The district published the notice 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. Op. S.C. Att'y Gen., 2006 WL 1877118 (June 27, 2006).

### § 6-1-120. Confidentiality of county or municipal taxpayer information.

- (A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, or the agent of such an officer or employee to divulge or make known in any manner the financial information, or other information indicative of units of goods or services sold, provided by a taxpayer included in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:
- (1) tax authorized under Article 5 or Article 7;
  - (2) business license tax authorized under Section 4-9-30(12) or Section 5-7-30;
  - (3) fee the measure of which is:
    - (a) gross proceeds of sales of goods or services; or
    - (b) paid admissions to a place of amusement.
- (B) Nothing in this section prohibits the:
- (1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;

## § 6-1-330

(2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, or an agent retained by an officer or employee, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;

(3) sharing of data between public officials or employees in the performance of their duties.

(C) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction.

HISTORY: 1999 Act No. 111, § 1; 2000 Act No. 269, § 1.

### ATTORNEY GENERAL OPINION

An appeal from the Business License / User Fee Appeals Board is made to a county council which reviews the record and decides the appeal without further hearing. Pursuant to § 30-4-60, the county council meeting at which the appeal is considered is open to the public. This opinion addressed how to apply § 6-1-120 as amended by 2000 Act No. 269 and preserve the confidentiality of records discussed at a public meeting. The opinion advised that § 6-1-120(B)(2) specifically provides that nothing in the section prohibits the “inspection of reports, returns or applications and the information included on them by an officer or employee in connection with audits or appeals.” Section 6-1-120(B)(3) was added to state that nothing prohibits the “sharing of data between public officials or employees in the performance of their duties.” Therefore, § 6-1-120 does not bar the release of taxpayer information to members of county council for use in the evaluation of an appeal. The county council would be entitled to redact information from the record on appeal in accordance with § 6-1-120. The opinion notes that in *The State-Record Co., Inc. v. City of Columbia*, the circuit court judge declared that § 6-1-120(A) must be read to preclude disclosure of financial information contained in business license applications. The defendant’s failure to provide public access to the non-financial information contained in business license applications, including specifically, the name of the applicant, and the name, location and type of business, was declared a violation of the FOIA. The court permanently restrained and enjoined the defendant from withholding public access to the non-financial information contained in a business license application. Op. S.C. Att’y Gen., 2000 WL 1205927 (June 28, 2000).

## § 6-1-330. Local fee imposition limitations.

(A) A local governing body, by ordinance approved by a positive majority, is authorized to charge and collect a service or user fee. A local governing body must provide public notice of any new service or user fee being considered and the governing body is required to hold a public hearing on any proposed new service or user fee prior to final adoption of any new service or user fee. Public comment must be received by the governing body prior to the final reading of the ordinance

to adopt a new service or user fee. A fee adopted or imposed by a local governing body prior to December 31, 1996, remains in force and effect until repealed by the enacting local governing body, notwithstanding the provisions of this section.

(B) The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by a fee is five percent or more of the imposing entity's prior fiscal year's total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.

(C) If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice.

HISTORY: 1997 Act No. 138, § 7.

**§ 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.**

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
- (2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
- (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

## § 30-2-10

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

(5) if he is a public member, he shall furnish a copy to the presiding officer of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

(C) Where a public official, public member, or public employee or a member of his immediate family holds an economic interest in a blind trust, he is not considered to have a conflict of interest with regard to matters pertaining to that economic interest, if the existence of the blind trust has been disclosed to the appropriate supervisory office.

(D) The provisions of this section do not apply to any court in the unified judicial system.

(E) When a member of the General Assembly is required by law to appear because of his business interest as an owner or officer of the business or in his official capacity as a member of the General Assembly, this section does not apply.

HISTORY: 1991 Act No. 248, § 3.

## § 30-2-10, *et seq.*. The Family Privacy Protection Act of 2002.

This chapter shall be designated as the “Family Privacy Protection Act of 2002”.

HISTORY: 2002 Act No. 225, § 1.

### PRACTICE POINTERS

This Act implements the Family Privacy Protection Act of 2002. There was some dispute as to whether county governments must adhere to the requirements contained in §§ 30-2-20 and 30-2-40. It is unlikely that political subdivisions are encompassed in the reference to “state agencies, boards, commissions, institutions, departments, and other state entities, by whatever name known.” However, § 30-2-50 (discussed below) was amended so that these provisions are applicable to county government.

Section 30-2-20 states that all state agencies, boards, commissions, institutions, departments, and other state entities, by whatever name known must develop privacy policies and procedures to



ensure that the collection of personal information pertaining to citizens of the State is limited to such personal information required by any such agency, board, commission, institution, department, or other state entity and necessary to fulfill a legitimate public purpose. Section 30-2-40 requires state agencies, boards, commissions, institutions, departments, or other state entities which host, support, or provide links to pages or sites accessible through the world wide web must display their privacy policy and the name and telephone number of the person responsible for administration of the policy. The section also requires that when personal information is collected by an entity covered by § 30-2-40 the citizen must be advised that the information is subject to public scrutiny.

**§ 30-2-50. Obtaining personal information from state agency for commercial solicitation; penalty.**

(A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, 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.

HISTORY: 2002 Act No. 225, § 1; 2003 Act No. 20, § 2; 2017 Act No. 67, § 6.

**PRACTICE POINTERS**

Counties can comply with § 30-2-50(B) by boldly placing the following statutory language on all of their websites, FOIA request forms, and fee schedules:

**PURSUANT TO S.C. CODE § 30-2-50**

**(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.**

**(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.”**

## § 30-2-50

If the county has an FOIA portal, this language should be placed on the electronic forms or on the instruction page. If fee schedules and any other notices regarding FOIA are placed on the county's notice board, make sure the commercial solicitation notice is highlighted. It is also recommended that the county provide this notice at all offices that provide services directly to the public, for example, at customer service windows.

Table I. Exemptions from FOIA under SC statutes

	<b>Department/ Area</b>	<b>S.C. Code of Laws</b>	<b>Year</b>	<b>Exemption Summary</b>
<b>1</b>	Agriculture	46-9-35	2002	Licensing exams and exam questions maintained or administered by the State Crop Pest Commission, its agents, or employees
<b>2</b>	Agriculture	46-25-210	2002	Identifying information related to the holder of a general or restricted fertilizer permit (homeland security purposes)
<b>3</b>	Agriculture	46-25-860	1962	Amount of fertilizer sold and business practices of any guarantor obtained from tonnage reports or from inspection of records or books
<b>4</b>	Agriculture	46-50-30	1998	Information acquired by commission officers, employees, or agents dealing with the recordkeeping of regulated milk businesses under the Southern Interstate Dairy Compact
<b>5</b>	Banking, Financial Institutions and Money	34-11-90	1962	Record of expunged conviction for writing a fraudulent check (one year after first offense)
<b>6</b>	Banking, Financial Institutions and Money	34-28-410	1985	Records dealing with accounts, loans, and voting rights of depositors, borrowers, and stockholders, except when authorized by account holder
<b>7</b>	Banking, Financial Institutions and Money	34-30-160	1997	Books and records of a state savings bank
<b>8</b>	Banking, Financial Institutions and Money	34-30-590	1997	Information compiled during an investigation of any association; collateral given by a borrower, amount of stock owned by a stockholder; stockholder lists; accounts of a customer; complaints about state savings banks that could result in an investigation

<b>9</b>	Banking, Financial Institutions and Money	34-36-50	1992	Material compiled in an investigation or examination of a loan broker by the department until the examination is over or final action is taken
<b>10</b>	Consumer Protection Code	37-3-505	1976	Information described in annual reports relating to supervised loans (may only be published in composite form)
<b>11</b>	Corrections, Jails, Probations and Pardons	24-21-1150	2002	Any information or records of the interstate Commission (for adult offender supervision) that would adversely affect personal privacy or proprietary interests, can disclose or trade confidential information with other law enforcement agencies
<b>12</b>	Counties	4-10-90, 4-10-370, 4-37-30	1990, 1997, 1995	Information about individual taxpayers given to the State and county treasurers by the Department of Revenue, including but not limited to gross receipts, net taxable sales, and tax liability by taxpayers
<b>13</b>	Counties	4-10-600	2000	Information supplied to counties and municipalities upon request by the Board of Economic Advisors about individual taxpayers including but not limited to gross receipts, net taxable sales, and tax liability by taxpayers
<b>14</b>	Counties	4-10-790	2006	Information supplied to the state treasurer and political subdivisions by the Office of Revenue and Fiscal Affairs about individual taxpayers including but not limited to gross receipts, net taxable sales, and tax liability by taxpayers.
<b>15</b>	Crimes and Offenses	16-3-740	1988	Results of HIV, Hepatitis B, and STD tests taken by convicted offenders
<b>16</b>	Crimes and Offenses	16-3-1240	1982	The records, papers, files, and communications of the Board, its panel and the Director and  staff of the Victim's Advisory Board
<b>17</b>	Crimes and Offenses	16-3-1525	1997	The names, addresses, and telephone numbers of victims and witnesses contained in files of a jail, prison, detention or holding facility, or mental health facility

<b>18</b>	Crimes and Offenses	16-3-1535, 16-3-1555	1996, 1997	The names, addresses, and telephone numbers of victims and prosecution witnesses contained in the records of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Board of Juvenile Parole, and the Department of Juvenile Justice.
<b>19</b>	Crimes and Offenses	16-3-1640	1994	Information requested and received by the Crime Victim's Ombudsman of the Office of the Governor
<b>20</b>	Domestic Relations	63-7-40	2008	Identifying information of a person leaving an infant at a safe haven
<b>21</b>	Domestic Relations	63-11-550	2008	Information maintained by the Guardian ad Litem program (Director or designee may disclose information from child services records, but only discussion of the program's activities in the case or previously published information)
<b>22</b>	Domestic Relations	63-7-330	2008	Identity of a person making a report that a child has been or may be abused or neglected, except to law enforcement
<b>23</b>	Domestic Relations	63-7-1990	2008	Information in the Central Registry of Child Abuse and Neglect
<b>24</b>	Domestic Relations	63-3-20	2008	Family court records relating to juveniles
<b>25</b>	Domestic Relations	63-7-2600	2008	Records pertaining to termination of parental rights
<b>26</b>	Domestic Relations	63-9-780	2008	Adoption papers and records filed with the clerk of court and records of adoption proceedings from the Department of Social Services or any authorized agency
<b>27</b>	Domestic Relations	63-11-1350	2008	Records, reports, applications, and files kept on clients and potential clients of Continuum of Care For Emotionally Disturbed Children

<b>28</b>	Domestic Relations	63-11-1990	2008	Everything acquired by the State Child Fatality Advisory Committee and Department of Child Fatalities in exercising their duties, can be disclosed if necessary to carry out duties and purposes; all records except those available from other sources; otherwise confidential
<b>29</b>	Domestic Relations	63-19-2020	2008	Information and records contained in juvenile records used in the discharge of official duty of the court or juvenile justice department employees, fingerprints or photographs taken
<b>30</b>	Domestic Relations	63-19-2030	2008	Law enforcement records of children and information identifying children (child is defined as someone under 18 years old)
<b>31</b>	Domestic Relations	63-19-2220	2008	Any Interstate Commission for Juveniles records or information that would adversely affect personal privacy or proprietary interests
<b>32</b>	Education	59-153-80	1999	Investment decisions or deliberations made by the Board of Trustees of an institution of higher learning when acting as trustee of the endowment fund
<b>33</b>	Environmental Protection and Conservation	48-20-50	1990	Application and certificate of exploration (South Carolina Mining Act)
<b>34</b>	Environmental Protection and Conservation	48-43-30	1988	Log and samples of exploratory oil, gas, or wildcat wells; expires after one year unless request for additional year is filed
<b>35</b>	Fish, Game and Watercraft	50-5-380	2000	Information on fisheries which is required by any state or federal law to be kept confidential; noncommercial information provided to the department in support of a resource or management activity
<b>36</b>	General Assembly	2-15-120	1981	Records and audit working papers of the Legislative Audit Council
<b>37</b>	General Assembly	2-17-90	1991	Gifts to state employees by lobbyists, if disclosure would harm negotiations in economic development project (must get prior written approval); can disclose later when approving official deems appropriate

38	General Assembly	2-19-30	1975	Information that has been gathered by the Judicial Merit Selection Commission about a judge or justice candidate who has withdrawn from consideration
39	General Assembly	2-19-50	1975	All records, information and other material that the Judicial Merit Selection Commission has used to make findings of fact, except those presented under oath at the public hearing
40	General Assembly	2-20-50	1996	All records, information and other material the joint committee (of four House and four Senate members) has used to make findings of fact (for nonjudicial screenings and elections), except those presented under oath at the public hearing
41	Health	44-1-110	1962	Patient-identifying information from DHEC's records
42	Health	44-6-180	1985	Patient records involved in the administration of the Medically indigent Assistance Program or the data collected by the Data Oversight Council
43	Health	44-7-2590	1989	Information related to children and families affected by the Infants and Toddlers with Disabilities Act
44	Health	44-20-340	1990	Records pertaining to the identity of a person whose condition or treatment has been studied by the Department of Disabilities and Special Needs
45	Health	44-22-100	1991	Records identifying a mentally ill patient, alcohol and drug patient, former patient, or individual whose commitment has been sought; exceptions for consent, court proceedings and cooperation with other state or federal agencies to help the patient
46	Health	44-23-1100	1962	Completed forms of mentally ill or intellectually disabled patients retained by probate judges
47	Health	44-26-130	1992	Communications between intellectually disabled clients and intellectually disabled professionals, with exceptions for consent, court proceedings and research by the department

48	Health	44-29-135	1978	Information held by DHEC and agents relating to known or suspected cases of sexually transmitted diseases
49	Health	44-29-250	1996	Results of anonymous HIV tests
50	Health	44-30-60	1992	Records of expert review panel developed by the health department to follow CDC regulations
51	Health	44-31-20	1962	Reports and records of clinical laboratory examination for the presence of tuberculosis
52	Health	44-35-40	1962	Information that could identify cancer patients
53	Health	44-37-30	1962	Neonatal testing results and blood samples
54	Health	44-38-60	1992	Reports and records of the Head and Spinal Cord Injury Information system, as well as, the identities of involved patients, physicians, and hospitals.
55	Health	44-40-50	1986	Identity of veteran about whom information is received by the Agent Orange Information and Assistance Program
56	Health	44-44-30	2004	Referrals for treatment from the South Carolina Birth Defects Program within DHEC
57	Health	44-44-140	2004	Birth defects information collected by the South Carolina Birth Defects Program
58	Health	44-53-398	2006	Log of ephedrine and pseudoephedrine sales kept by retailers, including names and addresses of customers, amount of ephedrine or pseudoephedrine products sold, and the date and time of the sale
59	Health	44-53-530	1962	Confidential financial accounts to be used by law enforcement to purchase information or evidence relating to an investigation, services, or provide compensation in confidential matters that support law enforcement activity (deals with narcotics and controlled substances)
60	Health	44-53-1360	1979	Examinations for lead poisoning in children
61	Health	44-53-1650	2006	Prescription information submitted to drug control

<b>62</b>	Health	44-61-160	2004	Identities of patients, emergency and critical care medical services personnel, and emergency and critical care services mentioned in connection with EMS; identities of patients, physicians, or hospitals; information from emergency practices review committee
<b>63</b>	Health	44-61-550	2004	Records and reports of the Trauma Registry
<b>64</b>	Highways, Bridges and Ferries	57-5-1495	1998	Information collected by the Department of Transportation or authorized agent to established and monitor electronic toll collections accounts; also all data, photographs, or other recorded images
<b>65</b>	Insurance	38-9-380	1996	RBC reports and plans; Adjusted RBC plans; and Corrective Orders issued by the director
<b>66</b>	Insurance	38-13-30	1976	Work papers, recorded information, documents and copies held by the director, his designee, or others in the course of an investigation
<b>67</b>	Insurance	38-13-85	1988	Financial analysis ratios and examination synopses concerning insurers submitted to the department by the National Association of Insurers Regulatory Information System
<b>68</b>	Insurance	38-13-160	1976	Authorized insurers' or their employees' replies to director or designee's inquiries about transactions, conditions, or other matters necessary to the administration of state insurance laws
<b>69</b>	Insurance	38-13-400	1994	Reports obtained by director or designee containing insurers' material acquisitions and disposition of assets; material non-renewals; cancellations; or revisions of ceded reinsurance agreements
<b>70</b>	Insurance	38-19-1200	1998	Information disclosed to the Director of the Department of Insurance or others when preparing, filing, or processing an application to reorganize (except information given to policyholders in connection with the meeting of policyholders)



<b>71</b>	Insurance	38-21-290	1976	Information, documents, or copies disclosed to the director or any other person in the course of an examination made pursuant to the Insurance Holding Company Regulatory Act
<b>72</b>	Insurance	38-26-50	1991	Proceedings, hearings, notices, correspondence, reports, and records in possession of the director, his designee, or the Department of Insurance relating to the supervision of an insurer
<b>73</b>	Insurance	38-27-230	1976	Records and documents of the insurer; insurance department files; and court records and papers pertaining to the proceedings and judicial review under the Insurers' Liquidation and Rehabilitation Act
<b>74</b>	Insurance	38-33-110	1976	Information concerning complaints and malpractice claims filed against the Health Maintenance Organization (HMO)
<b>75</b>	Insurance	38-33-260	1976	Data pertaining to diagnosis, treatment, or health of any enrollee or application obtained by any HMO
<b>76</b>	Insurance	38-43-55	2002	Documents or materials in the control of or possession of the Department of Insurance that is furnished by an insurer, producer, or their employees or agents obtained in an investigation
<b>77</b>	Insurance	38-43-106	1991	Information obtained by a continuing education advisory committee in the course of its duties
<b>78</b>	Insurance	38-55-75	2001	Documents or information received from the National Association of Insurance Commissioners or other regulatory officials which are classified as confidential by that association or state
<b>79</b>	Insurance	38-73-1330	1976	Information submitted by a ratings organization for examination when insurers fail to correct mistakes brought to their attention within 60 days
<b>80</b>	Insurance	38-77-850	1997	Information filed with the director by an insurance carrier in relation to an assigned risk
<b>81</b>	Insurance	38-79-20	1988	Information related to parties involved in medical malpractice judgments

<b>82</b>	Insurance	38-79-160	1987	Loss, claim, expenses or statistical data related to medical malpractice suits collected by the director of the South Carolina Medication Malpractice Liability Joint Underwriting Association
<b>83</b>	Insurance	38-90-20	2000	Information filed with the director by a captive insurance company while seeking a license
<b>84</b>	Insurance	38-90-70	2000	Financial condition reports submitted to the director by a captive insurance or captive reinsurance company
<b>85</b>	Insurance	38-90-80	2000	Examination reports, preliminary examination reports or results, working papers, recorded information, documents, and other information gathered by the director while examining a captive insurance company
<b>86</b>	Insurance	38-90-560	2004	Examination reports, preliminary examination reports or results, working papers, recorded information, documents, and other information gathered by the director while examining a special purpose financial captive insurance company
<b>87</b>	Insurance	38-93-40	2010	Genetic information that allows identification of the individual tested
<b>88</b>	Labor and Employment	41-1-15	1997	Information and test results received by the employer through a substance abuse testing program
<b>89</b>	Labor and Employment	41-25-80	1962	Records and files of all applicants, customers, job orders, and related data of a private personnel placement service
<b>90</b>	Labor and Employment	41-35-125	2005	Evidence of domestic abuse acquired by the commission while awarding benefits for those unemployed due to domestic abuse
<b>91</b>	Law Enforcement and Public Safety	23-3-260	1985	Identifying information maintained at the Missing Person Information Center
<b>92</b>	Law Enforcement and Public Safety	23-3-650	1994	DNA record and the results of DNA profiles stored by SLED or equally secure facility for the state DNA database

<b>93</b>	Law Enforcement and Public Safety	23-47-65	1998	Proprietary information submitted to the Revenue and Fiscal Affairs Office by CMRS providers or PSAPs, can be released only in aggregate amounts that do not show numbers of subscribers or revenues for individual CMRS providers
<b>94</b>	Law Enforcement and Public Safety	23-47-75	1998	CMRS location information obtained by safety personnel or for public safety personnel for public safety purposes
<b>95</b>	Libraries, Archives, Museums and Arts	60-4-10	1985	Records identifying library patrons
<b>96</b>	Magistrates and Constables	22-5-910(D)	1992	Nonpublic record of the offense and the date of the expungement (after three years following a first offense conviction in magistrate court or municipal court)
<b>97</b>	Magistrates and Constables	22-5-920(C)	2003	Nonpublic record of expunged offenses (after five years following a first offense conviction by a youthful offender in magistrates court or municipal court)
<b>98</b>	Motor Vehicles	56-1-221(A)	1988	Identities of medical advisory board members
<b>99</b>	Motor Vehicles	56-1-221(E)	1988	Reports received or made by the medical advisory board on whether a person is qualified to be licensed
<b>100</b>	Motor Vehicles	56-1-3380	1993	Information from an application for the issue, renewal, or replacement of a special identification card
<b>101</b>	Motor Vehicles	56-5-750(F)	1962	Record of expunged conviction (three years after first offense)
<b>102</b>	Motor Vehicles	56-5-1340	1962	Accident reports made by persons involved in the accident
<b>103</b>	Motor Vehicles	56-5-1360	1962	Required accident reports to a municipality made by persons involved in the accident
<b>104</b>	Planning, Research and Development	13-17-85	2005	Negotiations considering a research park or South Carolina as a facility site (unless industry or business gives permission).  Information on pending or incomplete research projects (as determined by the board).

<b>105</b>	Ports and Maritime Matters	54-7-100	1996	Actual locations or geographical coordinates of submerged archaeological historic properties (originally applied to H.L. Hunley)
<b>106</b>	Professions and Occupations	40-2-80	1996	Testimony and documents submitted in support of a complaint against a certified public accountant.  Public account or materials collected in an investigation.
<b>107</b>	Professions and Occupations	40-2-90	2004	Investigations, inquiries, and proceedings undertaken by the board when a violation may have occurred
<b>108</b>	Professions and Occupations	40-2-190	1996	Information from the client relating to services rendered (by accountant)
<b>109</b>	Professions and Occupations	40-3-190	1998	Investigations and proceedings related to complaints against architects
<b>110</b>	Professions and Occupations	40-6-190	2000	Investigations and proceedings related to complaints against auctioneers
<b>111</b>	Professions and Occupations	40-7-190	1997	Investigations and proceedings related to complaints against barbers
<b>112</b>	Professions and Occupations	40-10-190	2005	Investigations and proceedings related to complaints against fire sprinkler contractors
<b>113</b>	Professions and Occupations	40-11-190	1998	Investigations and proceedings related to complaints against contractors
<b>114</b>	Professions and Occupations	40-13-190	1998	Investigations and proceedings related to complaints against cosmetologists
<b>115</b>	Professions and Occupations	40-15-180	1962	Investigations and proceedings related to complaints against dentists, dental hygienists, and dental technicians
<b>116</b>	Professions and Occupations	40-15-215	1986	Information, investigations, and proceedings concerning action (limitation or surrender) of a holder of license or certificate.  Investigation and proceedings related to complaints against dentists, dental hygienists, and dental technicians.
<b>117</b>	Professions and Occupations	40-19-190	1998	Investigations and proceedings related to complaints against embalmers and funeral directors
<b>118</b>	Professions and Occupations	40-22-190	2000	Investigations and proceedings related to complaints against engineers and land surveyors (except final order of the board).

<b>119</b>	Professions and Occupations	40-22-230	2000	Comments from references when applying for an engineering or land surveying license
<b>120</b>	Professions and Occupations	40-23-190	2002	Information relating to allegations of misconduct or incapacity (Environmental Certification Board)
<b>121</b>	Professions and Occupations	40-29-170	2001	Investigations until complete (Uniform Standards Code for Manufactured Housing)
<b>122</b>	Professions and Occupations	40-33-116	2004	Orders requiring nursing licensees or applicants to submit to mental or physical exams.  Decisions of administrative hearing officers.
<b>123</b>	Professions and Occupations	40-33-190	2004	Confidential investigative files, identities of complainants or witnesses (Nurse Practice Act)
<b>124</b>	Professions and Occupations	40-33-1325	2005	Licensee's participation in an alternative program instead of receiving adverse action (Nurse Licensure Compact)
<b>125</b>	Professions and Occupations	40-35-190	2004	Investigations and proceedings related to complaints against long term health care administrators
<b>126</b>	Professions and Occupations	40-36-190	1977	Investigations and proceedings related to complaints against occupation therapists
<b>127</b>	Professions and Occupations	40-37-190	2005	Investigations and proceedings related to complaints against optometrists
<b>128</b>	Professions and Occupations	40-38-190	1998	Investigations and proceedings related to complaints against opticians
<b>129</b>	Professions and Occupations	40-39-90	1988	Pawnbrokers' loan records that identify individuals
<b>130</b>	Professions and Occupations	40-45-190	1998	Investigations and proceedings related to complaints against physical therapists
<b>131</b>	Professions and Occupations	40-47-36	2006	Criminal background checks of physicians, surgeons, and osteopaths applying for licenses to practice
<b>132</b>	Professions and Occupations	40-47-114	2006	Orders requiring licensees or applicants to submit to professional competency, mental or physical exams.  Decisions of administrative hearing officers.

<b>133</b>	Professions and Occupations	40-47-118	2006	Identity of complainant. Agreements between the respondent and department.
<b>134</b>	Professions and Occupations	40-47-190	2006	Patient records and identities, identity of minors or sexual battery victims, the identity of confidential informants and other witnesses, all information contained in confidential investigative files.
<b>135</b>	Professions and Occupations	40-47-745	2005	Oral or written communications related to revocation, suspension or restriction of a license of a person who presents himself as an acupuncturist, auricular therapist, or auricular detoxification specialists without being licensed to do so
<b>136</b>	Professions and Occupations	40-55-130	1962	Investigations and proceedings related to complaints against psychologists
<b>137</b>	Professions and Occupations	40-58-65	2009	Information obtained by the department when examining the books and records of a mortgage broker
<b>138</b>	Professions and Occupations	40-59-190	2002	Investigations and proceedings related to complaints against residential home builders
<b>139</b>	Professions and Occupations	40-60-190	2006	Investigations and proceedings related to complaints against real estate appraisers
<b>140</b>	Professions and Occupations	40-61-80	1962	Investigations and proceedings related to complaints against sanitarians
<b>141</b>	Professions and Occupations	40-63-90	2002	Investigations and proceedings related to complaints against social workers
<b>142</b>	Professions and Occupations	40-68-40	1993	Information regarding net worth when applying for a license to operate a professional employer organization
<b>143</b>	Professions and Occupations	40-75-90	1998	Investigations and proceedings related to complaints against professional counselors and marriage and family therapists
<b>144</b>	Professions and Occupations	40-75-190	1985	Records of treatments maintained by a licensed professional counselor or marriage and family therapist
<b>145</b>	Professions and Occupations	40-77-190	1986	Investigations and complaints related to complaints against geologists

<b>146</b>	Professions and Occupations	40-79-190	2000	Investigations and proceedings related to complaints against people in the alarm system business
<b>147</b>	Professions and Occupations	40-81-190	2003	Oral or written communication to the State Athletic Commission, the director of the commission or a representative that relates to the discipline of a licensee
<b>148</b>	Professions and Occupations	40-82-190	1999	Investigations and proceedings related to complaints against people in the liquid petroleum gas business
<b>149</b>	Professions and Occupations	40-82-310	1999	Reports filed concerning explosions of the equipment or gas system a person has serviced
<b>150</b>	Public Finance	11-7-35	2002	All audit working papers and memoranda of the State Auditor except final audit reports
<b>151</b>	Public Finance	11-35-410	1981	Responses to a request for proposals (RFP); customer lists, design recommendations and concepts, prospective problems under an RFP, biographical data on key employees of the bidder, pre-decisional documents not incorporated into the contract award
<b>152</b>	Public Officers and Employees	8-11-94	1981	Names of state employees authorizing deductions for charitable contributions and the amount of the individual contributions (except for tax purposes)
<b>153</b>	Public Officers and Employees	8-11-110	1962	Medical records of employees seeking help with alcoholism
<b>154</b>	Public Officers and Employees	8-13-320	1991	Investigations, inquiries, and hearings by the State Ethics Commission and accompanying documents unless respondent waives right to confidentiality or matter is dismissed
<b>155</b>	Public Officers and Employees	8-13-540	1991	Preliminary and investigation records of the ethics commission
<b>156</b>	Public Officers and Employees	8-13-1170	1991	Technical (unintentional) violations of disclosure requirements on statements of economic interest, unless the public official, employee, or member filing the statement requests it be made public

<b>157</b>	Public Officers and Employees	8-13-1372	1991	Technical (unintentional) violations on campaign reports, unless the candidate filing the report requests it be made public
<b>158</b>	Public Officers and Employees	8-17-345	1996	Records, reports, documents, discussion, and other information received by the mediator-arbitrator when mediating appeals relating to adverse employment actions
<b>159</b>	Public Officers and Employees	8-17-360	1982	Records, reports, documents, discussion, and other information received by a State Human Resources Director (appointed mediator) used in mediation conferences
<b>160</b>	Public Utilities, Services and Carriers	58-12-330	2006	Cable television franchise holders' quarterly statements of revenue and money owed to the county or municipality in which the franchise holder operates
<b>161</b>	Public Utilities, Services and Carriers	58-12-340	2006	Negotiations and mediations between a municipality or county and a franchise authority
<b>162</b>	Retirement Systems	9-16-80	1998	Records that disclose deliberations or decisions by board or commission dealing with investments or financial matters if disclosure could hinder investments
<b>163</b>	Securities	35-1-607	2005	Records obtained for an audit; part of a record filled in connection with a registration statement; social security numbers, home telephone numbers or addresses; information nondisclosable because of the public interest and interests of investors
<b>164</b>	Social Services	43-1-160	1962	Information concerning applicants and recipients of public assistance. Exception if disclosure connected with the administration of the applicable program or as authorized by state or federal regulations.
<b>165</b>	Social Services	43-31-150	1962	Any information concerning applicants and recipients of vocational rehabilitation



<b>166</b>	Social Services	43-35-590	2006	Information and records acquired by the Vulnerable Adult Fatalities Review Committee in exercise of their duties and responsibilities
<b>167</b>	Taxation	12-54-220	1985	Information received as a result of an exchange of information between South Carolina and the Internal Revenue Service or any other state
<b>168</b>	Taxation	12-54-230	1985	Employer's Quarterly Report or information extracted from it
<b>169</b>	Trade and Commerce	39-51-110	1975	Antifreeze formula disclosed to Commissioner for registration purposes
<b>170</b>	Trade and Commerce	39-73-330	1993	Information obtained by an administrator through a private investigation
<b>171</b>	Workers' Compensation	42-3-195	1993	Information and statistics provided to the Commissioner of Labor to use for scheduling of inspections for compliance with occupational safety and health rules and regulations and statistical evaluation of hazards

