

S.C. Freedom of Information Act: Sunshine Through the Climate Change

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S.C.Code Ann. § 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.”

- Conduct business openly
- Promotes democracy (see Russia, China, Iran, North Korea)
- Promotes trust and confidence in government
- Holds government accountable
- Gives everyone a greater chance to participate

S.C.Code Ann. § 30-4-15. Findings and purpose

“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**.”

S.C. Attorney General

“When in doubt, **disclose**.

When in doubt, **post** the meeting.

When in doubt, **open** the meeting.

When in doubt, **release** the document.”

Letter from the Hon. Charles W. Condon
to the S.C. Press Association, undated.

S.C.Code Ann. § 30-4-15. Findings and purpose

“The ***General Assembly*** finds...

“DISCLOSE!”

“OPENNESS!”

“TRANSPARENCY!”

We're Open... *Until We're Not*

S.C.Code Ann. § 30-4-40(a) **Exemptions...**

...(8) Memoranda, correspondence, and working papers in the possession of individual members of the *General Assembly* or their immediate staffs;...

Freedom of “Information?”

- Does the FOIA really have anything to do with “information?”
 - Right to inspect and copy “public records”
 - Access to “meetings” of public bodies

§ 30-4-20. Definitions

(a) "**Public body**" means any department of the State ..., any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties... 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...

Quality Towing, Inc. v. City of Myrtle Beach (S.Ct., filed
May 21, 2001)

“Public Body”

- The name of the group is irrelevant.
- What matters is:
 - Who established it?
 - Who comprises it?
 - What does the group do?
 - Does it receive public funds?
 - Does it spend public funds?

§ 30-4-20. Definitions

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

- Bottom Line: Anyone can make a FOIA request... *maybe.*
- *Does everyone have a remedy for an alleged FOIA violation?*

§ 30-4-20. Definitions

of times mentioned in FOIA

“Person”	17*
“Citizens”	2
“Citizen of the State”	1

Only “person” is defined.

* When referring to a FOIA requestor

§ 30-4-20. Definitions

- (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...
- Presume it is a “public record,” then look for any exemptions from disclosure (*i.e.*, is there some reason why the record sought should not be disclosed?)

“Public Record”

- Does this include texts?
- Whose phone is it?
- Does it matter who paid for the phone?
- Did the text / image pass through the County server?
- How many fairies can dance on the head of a pin?

§ 30-4-20. Definitions

(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.

§ 30-4-20. Definitions

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

- What does “Constituent membership” mean?
- “Fixed” vs. “Appointed” membership
- Bylaws, Rules of Procedure, Ordinance
 - Why guess?
- Robert’s Rules (latest edition)

§ 30-4-30. Electronic records, prisoner rights, fees, deposits

(A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body...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...

Conclusion... An individual in prison is not a “person.”

§ 30-4-30. Electronic records, prisoner rights, fees, deposits

(A)(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.

§ 30-4-30. Electronic records, prisoner rights, fees, deposits

- 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.

FOIA Fees

- Fees charged by a public body must be uniform for copies...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.

FOIA Fees

- *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.

§ 30-4-30. Electronic records, prisoner rights, fees, deposits

- 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.

FOIA Fees

- 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 benefiting the general public.

FOIA Fees

- Fees may not be charged for examination and review to determine if the documents are subject to disclosure.
 - What about charging for time reviewing records to determine if any are subject to redaction?
- 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.

§ 30-4-30

The “10-day Letter”

- 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.

§ 30-4-30

The “30-day Response”

- This determination must constitute the final opinion of the public body as to the public availability of the requested public record...
- 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.

§ 30-4-30

FOIA Determination and Response

- ...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 as 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.

§ 30-4-30

FOIA Determination and Response

- 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.
- Bottom Line: The 10-day letter is hard to mess up...And even if you don't send it, the consequences are the same as if the public body were to provide all non-exempt records requested anyway.

Sample 10-day Response

[Date]

I. M. Requestor
411 Elm Street
Aiken, SC 29801

Re: S.C. Freedom of Information Act Request dated November 1, 2026

Dear Mr. Requestor,

We are in receipt of your South Carolina Freedom of Information Act request as above-referenced. In accordance with S.C.Code Ann. Section 30-4-30, this is to advise that we will provide you with copies of all non-exempt public records in our possession that are responsive to your request within thirty (30) days of this letter.

Thank you for contacting Aiken County.

Sincerely,

I. M. County

Sample 10-day Response

What this short letter accomplishes:

- Receipt (We got your letter).
- Here's your point of contact at the County.
- We know what the law is and have cited it (Section 30-4-30).
- We will provide to you...
- Copies of 1) non-exempt 2) public records 3) in our possession 4) that are responsive to your request.
- We will do that within 30 days of the date of this letter.
- Thank you for your interest in the workings of the government of the County.

Sample 10-day Response

What this short letter does *not* do:

- It does not promise to provide exempt public records.
- It does not promise that we have any records that are responsive to the request.
- It is not conclusive on whether or not there may be **charges**.
- **[If it appears that there will be charges, list that in the determination letter].**

...Do not overthink the 10-day letter.

The “10-Day Letter”

- When to send?
- What should it say?
 - Costs
 - Time/Admin burden
 - Narrow the scope
 - Follow-up letter(s) / agreement(s)

§ 30-4-30

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...without the requestor being required to make a written request...when the requester appears in person:

- Minutes of the meetings of the public body for the preceding six months;
- Documents identifying persons confined in a jail, detention center, or prison for the preceding three months; and
- 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.

Is it a FOIA request?

- Does the FOIA require a public body to create a record that does not exist at the time of the request?
- Issue spotting.
- Request for information or answers *versus* request for public records?

Is the County the “records custodian?”

- Can’t provide what we don’t keep.
 - “You’re asking the wrong public body.”
- Even if custodian of certain categories of records, can’t provide what we don’t have.
 - “No records responsive to your request” (“We don’t have anything”); or
 - “No ‘non-exempt’ records responsive to your request” (“We have something, but you can’t see it”).

Records Request or Research Project

- The FOIA...a law that allows requestors to inspect and copy non-exempt public records and to attend most meetings...*not a means of tasking public employees with research projects.*
 - Providing help (service) vs. required action

Agency/Office Orientation

- What is the purpose/mission of your office?
- How do you define success?
 - Ombudsman
 - Public Information Office (PIO)
 - Operational Departments
 - Administration
 - Council
 - Legal

Island of Misfit Toys

- Frequent Flyers;
- Disgruntled Folks;
- Sovereign Citizens;
- First Amendment Auditors;
- People who flunked Kindergarten;
- Those whose signature is their thumbprint; and
- Those who missed the Hale Bopp Comet.

“If part of the settlement of your lawsuit involves burying chicken bones and incanting over them...”

Island of Misfit Toys

⁹ But avoid foolish controversies, genealogies, dissensions, and quarrels about the law, for they are unprofitable and worthless. ¹⁰ As for a person who stirs up division, after warning him once and then twice, have nothing more to do with him, ¹¹ knowing that such a person is warped and sinful; he is self-condemned.

Titus 3

§ 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...confidential and work products...

"(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...

§ 30-4-40. Matters exempt from disclosure

(3) Records, video or audio recordings, or other information compiled 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... ;

§ 30-4-40. Matters exempt from disclosure

(E) would disclose current techniques and procedures for law enforcement investigations or prosecutions...;

(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.

§ 30-4-40. Matters exempt from disclosure

(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;

§ 30-4-40. Matters exempt from disclosure

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

(A) For those persons receiving compensation of fifty thousand dollars or more annually...

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

§ 30-4-40. Matters exempt from disclosure

- Check 30-4-40 for specific exemption(s) / Don't try to memorize, pull out the statute and check.
 - 19 categories w/subparts and qualifications
- Can still disclose (but should you?)
 - “Where you stand depends on where you sit?”
 - Issue spot.
 - Who have I forgotten to tell or include?

§ 30-4-50. Law enforcement records, judicial relief

(A) ...the following categories of information are specifically made public information...:

- (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**;

§ 30-4-50. Law enforcement records, judicial relief

(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.

§ 30-4-50. Law enforcement records, judicial relief

(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...

(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...

§ 30-4-50. Law enforcement records, judicial relief

(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...

§ 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 Section 30-4-70 of this chapter.

§ 30-4-70. Meetings which **may** be closed

- (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...

§ 30-4-70. Meetings which **may** be closed

- (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.

§ 30-4-70. Meetings which may be closed

(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...

§ 30-4-70. Meetings which may be closed

(b) Before going into executive session the public agency shall...announce the specific purpose of the executive session...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.

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

(a) All public bodies... 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. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings...

The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies...

Agendas / Amendments

“We conclude FOIA's notice statute does not require an agenda to be issued for a regularly scheduled meeting, and FOIA contains no prohibition on the amendment of an agenda.”

Lambries v. Saluda County Council
(S.Ct., filed June 18, 2014)

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

- (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...

§ 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...

- Minutes required, **not** verbatim transcript or recording of meetings.

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

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting...

(c) All or any part of a meeting of a public body may be recorded by any person in attendance (except for executive session)...., provided that in so recording there is **no active interference with the conduct of the meeting**...

§ 30-4-100. Equitable remedies, time constraints for court hearings

(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...

(B) If a person or entity seeking relief under this section prevails, he may be awarded **reasonable attorney's fees** and other costs of litigation specific to the request...

§ 30-4-110. Penalties, criminal penalties removed, remedies

(A) A public body may file a request...with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests...

...(C) ...the court may order:

- (1) equitable relief...;
- (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...

§ 30-4-110. Penalties, criminal penalties removed, remedies

(D) If a 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...

(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**.

§ 30-2-50. Family Privacy Protection Act

(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.

(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...that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

§ 30-2-50. Family Privacy Protection Act

(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.**

FOIA Requests by Councilmembers

“The Freedom of Information Act makes no distinction between members of the public, candidates for elected public office, members of the legislature, or other categories of requestors as to who may be able to inspect or copy public records of public bodies.”

S.C. Attorney General’s Opinion
September 30, 1993

FOIA Requests by Councilmembers

“It is this Office's opinion that the South Carolina Supreme Court's holding in *Wilson v. Preston*, 378 S.C. 348, 662 S.E.2d 580 (2008) should be read broadly to grant elected officials access to all records and information maintained by the body to which they are elected, rather than only granting access to financial documents.”

S.C. Attorney General's Opinion
April 8, 2021

FOIA And Procurement

S.C.Code Ann. Section 11-35-410, “Public access to procurement information.”

(A) Procurement information must be a public record to the extent required by (FOIA)...with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) ...the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:

- (1) customer lists;
- (2) design recommendations...
- (3) design concepts, including methods and procedures;
- (4) biographical data on key employees of the bidder.

FOIA And Procurement

S.C.Code Ann. Section 11-35-410, “Public access to procurement information.”

(F) ...[w]ithout otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently canceled.

FOIA And Procurement

“County shall notify Company in the event of a request for copies of Company’s confidential or proprietary information made in accordance with open records laws or otherwise...”

- Do you agree to this contract provision?
- Who tracks this issue?

Title 30, Public Records

CHAPTER 2, “Family and Personal Identifying Information Privacy Protection”

Article 1 The Family Privacy Protection Act

...Article 5 Law Enforcement Personal Privacy Protection Act

Article 7 Judicial Personal Privacy Protection Act



QUESTIONS?