


Public Records and the Freedom of Information Act (FOIA)

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PUBLIC RECORDS ACT - DEFINITIONS

§30-1-10(A) – Defers to public records definition found in § 30-4-20 of FOIA. Includes all books, papers, maps, photographs, cards, tapes, recording, or other materials regardless of physical form (including emails and phone records for work cell phones and other work equipment).

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PUBLIC RECORDS ACT - DEFINITIONS

§30-1-10(B) – Public body definition is similar to §30-4-20 definition in FOIA to include not only the State, counties and municipalities, but also committees that are appointed by these bodies.

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PUBLIC RECORDS ACT - DEFINITIONS

§30-1-20 – Custodian of records or records officer – the chief administrative officer of any agency or subdivision of any public body in charge of public records or creating, filing, or keeping public records is the legal custodian of those records and is responsible for maintaining them and complying with the retention schedule. He or she may appoint a records officer to act on his or her behalf.




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RETENTION SCHEDULE

§30-1-80 – Authorization to develop a records management program. Establish a procedure to manage email and other electronic records

§30-1-90 – Authorizes the SC Department of Archives and History to promulgate regulations to establish general retention schedules for records common to local government (council minutes, budgets, jail records, tax records, deeds, election books, emails, etc.)




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RETENTION SCHEDULE

Archives can help establish a retention schedule for documents that are unique for your county or municipality.

Local Records Service Unit: (803) 896-6203


SC Dept. of Archives & History Website: rm.sc.gov



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FREEDOM OF INFORMATION ACT (FOIA)

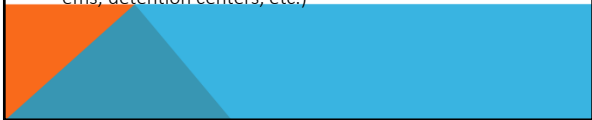
§30-4-10
§30-4-15 Public records and information must be made available to the public at a minimum cost or delay. Public has a right to inspect public records of public bodies.



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FOIA - DEFINITIONS


§30-4-20 "Public body" –Any public or governmental body or political subdivisions of the State (counties, municipalities, townships), school districts, special purpose districts, or agency **supported in whole or in part by public funds or expending public funds**, including committees, subcommittees, and advisory committees.... (sheriff's departments, police departments, jails, election and registration offices, ems, detention centers, etc.)



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FOIA – DEFINITIONS (CONT'D)

"Public Record"- Includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form (i.e. emails, use of social media at work)




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PUBLIC BODY MEETINGS

Meeting occurs when a quorum of the members are present

Quorum is a simple majority


No "chance meetings" to circumvent FOIA



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RESPONDING TO A FOIA REQUEST


§30-4-30 - 10 **business days** to respond to written FOIA request if documents are two years old or less. You have 30 **calendar days** from the response date to produce the documents. 20 **business days** to respond if documents are older than two years and 35 **calendar days** from the response date to produce the documents.



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RESPONDING TO A FOIA REQUEST(CONT'D)

Response (10 or 20 days) is the final opinion as to the availability of the documents requested. This response is not the final decision nor does it express an opinion as to whether exemptions apply that would require certain information to be redacted.




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RESPONDING TO FOIA (CONT'D)

You can ask for more time by mutual written consent. Consent cannot be unreasonably withheld. Failure to respond, request is deemed approved only for non-exempt material.

Time begins to run upon receipt (handwritten, typed, electronic mail), excluding weekends and holidays.




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RESPONDING TO A FOIA REQUEST (CONT'D)

Fees for records cannot exceed actual cost for search, retrieval, and redaction of records. Must post fee schedule online. No charge for documents sent in an electronic format.

Hourly charges for search, retrieval, & redaction cannot exceed the prorated hourly rate of the lowest paid employee who has the necessary skills and training to perform the request.




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RESPONDING TO A FOIA REQUEST (CONT'D)

A deposit charge of 25% can be required before making copies. Production time (30 or 35) begins to run from the date the deposit is received.

Records can be withheld until the full cost is received.




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RESPONDING TO A FOIA REQUEST (CONT'D)

Records that do not require a written request and the requestor appears in person:

- (1) minutes of meetings (county or city council, election commissions) for the last six months;
- (2) Crime reports for at least the last fourteen days;




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RESPONDING TO A FOIA REQUEST (CONT'D)

- (3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months.


§24-21-640 – prisoner’s in-prison disciplinary record.



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RESPONDING TO A FOIA REQUEST (CONT'D)


- (4) all documents produced by the public body or its agent distributed or reviewed by a public body member during a public meeting for the preceding six-month period (boards & commissions). May comply by placing documents on the public body’s website.



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RESPONDING TO A FOIA REQUEST (CONT'D)

- Names, sex, race, title, etc, of all employees and officers of public bodies (Burton v. York County Sheriff's Dept.)
- Home address, personal phone number, personal email off limits. Glassmeyer v. City of Columbia.
- Prevents inmates from using FOIA to inspect public records, unless it is in pursuit of their constitutional rights regarding their criminal charges.




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CERTAIN LAW ENFORCEMENT RECORDS ARE PUBLIC RECORDS

§30-4-50 – Dashcam video and audio are public records.


Law enforcement can petition circuit court to withhold the release of the data by showing clear and convincing evidence that the recording is exempt under §30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. Must petition the court within 15 days of the request for disclosure.



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FOIA EXEMPTIONS


§30-4-40 (optional)
(2) Information of a personal nature:
Income tax returns
Medical Records and SSN's.



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FOIA EXEMPTIONS (CONT'D)


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.



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FOIA EXEMPTIONS (CONT'D)


(3) Records, video or audio recordings other than dashcam video and audio recordings, compiled by law enforcement, but only to the extent they meet the exemption provisions.(Note: Body cameras are exempt. No longer have to demonstrate harm to the law enforcement agency to use the exemption provisions.)



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FOIA EXEMPTIONS (CONT'D)

(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;



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FOIA EXEMPTIONS (CONT'D)

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

(F) would endanger the life or physical safety of an individual;

(G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during trial.

- (Post and Courier v. City of North Charleston)




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FOIA EXEMPTIONS (CONT'D)

(4) Matters specifically exempted from disclosure by law:

- Juvenile Records §20-7-780 and §20-7-3300
- Criminal Charges against a person found innocent or dismissed §17-1-40(a) (Jail or detention center allowed to keep certain records under seal)




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FOIA EXEMPTIONS (CONT'D)

Records expunged by court order §17-22-910

Crimestoppers Act §23-50-10

Family Privacy Act §30-2-10




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FOIA EXEMPTIONS (CONT'D)

(5) Documents used in a proposed sale or purchase of property. Once deal is done, documents can be disclosed.

(6) Compensation of public body employees except:
 (A) Anyone making 50k or more & all department heads even if they make less than 50k.
 (B) For classified and unclassified employees with salaries between 30k and 50k, the compensation level within a range of 4k beginning at 30k.




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FOIA EXEMPTIONS (CONT'D)

(C) For classified employees making less than 30k, the salary schedule with the compensation range for the compensation level.

(D) For unclassified employees making less than 30k, the compensation level within a range of 4k beginning at 2k.

(7) Correspondence or work products from legal counsel.




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FOIA EXEMPTIONS (CONT'D)

(13) All materials gathered during a search to fill an employment, except materials relating to not fewer than the final three applicants (The Spartanburg Herald-Journal v. Spartanburg County School District No. 7).

(15) Identity of a Whistleblower.

Documents sent to a public official are subject to FOIA




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MEETINGS OF PUBLIC BODIES

§30-4-60 - Must be open to the public.
Can be in person or by phone or other electronic means.


§30-4-80 – Must give notice of place and time of all meetings at the beginning of the year.



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MEETINGS OF PUBLIC BODIES

Act No. 70 of 2015 requires agendas for all meetings of public bodies. Can be amended within or after 24 hours prior to a meeting by 2/3 vote if the matter is not a final action. If the matter is a final action or an item where there has not been and will not be an opportunity for public comment, requires 2/3 vote plus a finding of an emergency or exigent circumstances exists in order to amend agenda.




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MEETINGS OF PUBLIC BODIES

§ 30-4-20(d) Allows meetings to be held by electronic means. (WebEx, Go To Meeting, Go To Webinar, Zoom, WebinarNinja)

County or Municipality may have to amend rules or pass an ordinance to allow virtual meetings.

May have to be a combination of live stream and dial-in access for members of the public.




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MEETINGS OF PUBLIC BODIES

Notify any persons or organizations, media that may request notification.

§30-4-90 – Requires public bodies to keep written minutes of public meetings.




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MEETINGS CLOSED FROM THE PUBLIC – EXECUTIVE SESSION

§30-4-70 – a public body may hold a closed meeting for the following matters:


- Employment matters (hiring, firing, discipline)
- Discussion of negotiations for a proposed sale or purchase of property
- Legal advice



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MEETINGS CLOSED FROM THE PUBLIC – EXECUTIVE SESSION (CONT'D)

- Investigating criminal conduct
- Security personnel or devices
- Discussions of proposed location or expansion of industries or other businesses
- Must announce purpose before going into executive session and must be specific (Donahue v. City of North Augusta and Brock v. Town of Mt. Pleasant)




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PUBLIC HEARINGS FOR CERTAIN MATTERS

§4-9-130 – After reasonable public notice, which is not less than 15 days after being published in at least one newspaper of general circulation in the county:

- Adoption of annual budget
- Any appropriations, including supplemental appropriations
- Adoption of building codes
- Zoning adoption and subdivision regs
- Levy Taxes
- Sale or lease of real property owned by the county



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BUDGET ADOPTION NOTICE

§6-1-80 – (1) Name of governing entity (2) Time, date, and Location

(3) Total revenues and expenditures from the current budget of the governing entity (4) The proposed projected revenues and expenditures for next fiscal year (5) The proposed or estimated change in estimated budgets between the current fiscal year and the proposed budget

(6) The current millage

(7) The estimated millage needed for next year’s proposed budget




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REMEDIES FOR FAILING TO COMPLY WITH FOIA

Under §30-4-100, a citizen of the State may bring an action in circuit court for a declaratory judgment, injunctive relief, or both. (Freemantle v. Preston)

Under §30-4-110, a public body may bring an action in circuit court to seek relief from unduly burdensome, overly broad, vague, or otherwise improper requests.



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REMEDIES FOR FOIA VIOLATIONS (CONT'D)

A third party who has an interest in records that are exempt that may be released in a court action may petition the court to intervene in the proceedings.

A court may award reasonable attorney's fees, actual or compensatory damages, or equitable relief to the prevailing party. *Sloan v. Friends of the Hunley, Inc.* (Prevailing Party)



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REMEDIES FOR FOIA VIOLATIONS(CONT'D)

If a court determines records are not disclosable, this constitutes a good faith finding on behalf of the public body and serves as a complete bar against the award of attorney's fees if the court's determination is reversed on appeal.



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REMEDIES FOR FOIA VIOLATIONS(CONT'D)

Replaces criminal penalties with a civil fine of \$500 if the court finds a public body has arbitrarily and capriciously violated the provisions of FOIA by refusal or delay in providing copies of a public record(This is in addition to the award of actual or compensatory damages or equitable relief).




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USING PERSONAL INFORMATION FOR COMMERCIAL SOLICITATION PROHIBITED

§30-2-50 prohibits a person or private entity from knowingly obtaining personal information from a local government or other political subdivision for commercial purposes.

Must provide prohibition notice to all requestor of records.

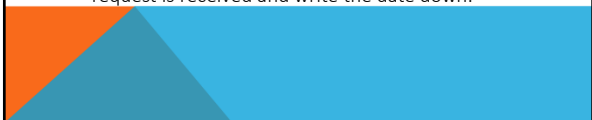
Violators are guilty of a misdemeanor and upon conviction, are subject to a \$500 fine and/or jail time up to one year.



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FOIA PRACTICALS


- Develop a written office policy to address how the office responds to a FOIA request.
- Designate one person.
- Provide training.
- Include a written policy specifying costs for searching and making copies of records (must be posted online).
- When a written request is received, write the date of receipt down.
- Count 10/20 working days from the date the FOIA request is received and write the date down.



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FOIA PRACTICALS (CONT'D)

- Determine if the request is for specific documents, a request to inspect or both.
- Determine if there will be fees and costs.
- Write back before the end of the 10/20-day response period.
- FOIA requires a written response within 10/20 working days.
- Anyone may appear in person, look at, and receive copies of certain records.
- Anticipate FOIA requests before they arrive.



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QUESTIONS?

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