



Changes to the Freedom of Information Act (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 **actually produce the documents. 20 business days** to respond if documents are older than two years and **35 calendar days** from the response date to **actually produce the documents.**




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.**




Responding to a FOIA(Cont'd)

- You can ask for more time by mutual written consent. 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.



Responding to a FOIA Request(Cont'd)

- Fees for copying records cannot exceed actual cost of searching for or making copies of records.
- Must post fee schedule online.
- No charge for documents sent in 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.



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.

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) for the last six months;
- (2) Crime reports for at least the fourteen-day period before the current day;

Responding to a FOIA Request (Cont'd)

- (3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months.
- **(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 county or entity's website.**


Responding to a FOIA(Cont'd)

- **Prevents inmates from using FOIA to inspect public records unless it in pursuit of their constitutional rights regarding their criminal charges.**




FOIA Exemptions

- §30-4-40(a)(2) exempts any audio recording of the final statements of a dying victim in a call to 911 emergency services.
- §30-4-40(a)(3) is amended so law enforcement no longer has to demonstrate harm to the agency by asserting any of the listed exemptions.



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.



FOIA Exemptions

- §30-4-40 (optional)
- (2) Information of a personal nature:
 - Income tax returns
 - Applications for tax exemptions such as Homestead Exemption
 - Medical Records and SSN's

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.

FOIA Exemptions(Cont'd)

- Records, video or audio recordings other than dashcam video and audio recordings, compiled by law enforcement, but only to the extent they meet exemption provisions.


Remedies for FOIA Violations

- Under §30-4-100, a citizen of the State may bring an action in circuit court for a declaratory judgement, injunctive relieve or both.
- Under §30-4-110, a public body may bring an action in circuit to seek relief from unduly burdensome, overly broad, vague or otherwise improper requests.




Remedies for FOIA Violations

- A third party who has an interest in records that meet certain exemptions that may be released in a court action may ask 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.




Remedies for FOIA Violations

- If a court determine 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 should the court's determination be reversed on appeal.**




Remedies for FOIA Violations

- 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 addition to the award of actual or compensatory damages or equitable relief.**




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.



Using Personal Info for Commercial Solicitation Prohibited (Cont'd)

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



Questions?

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