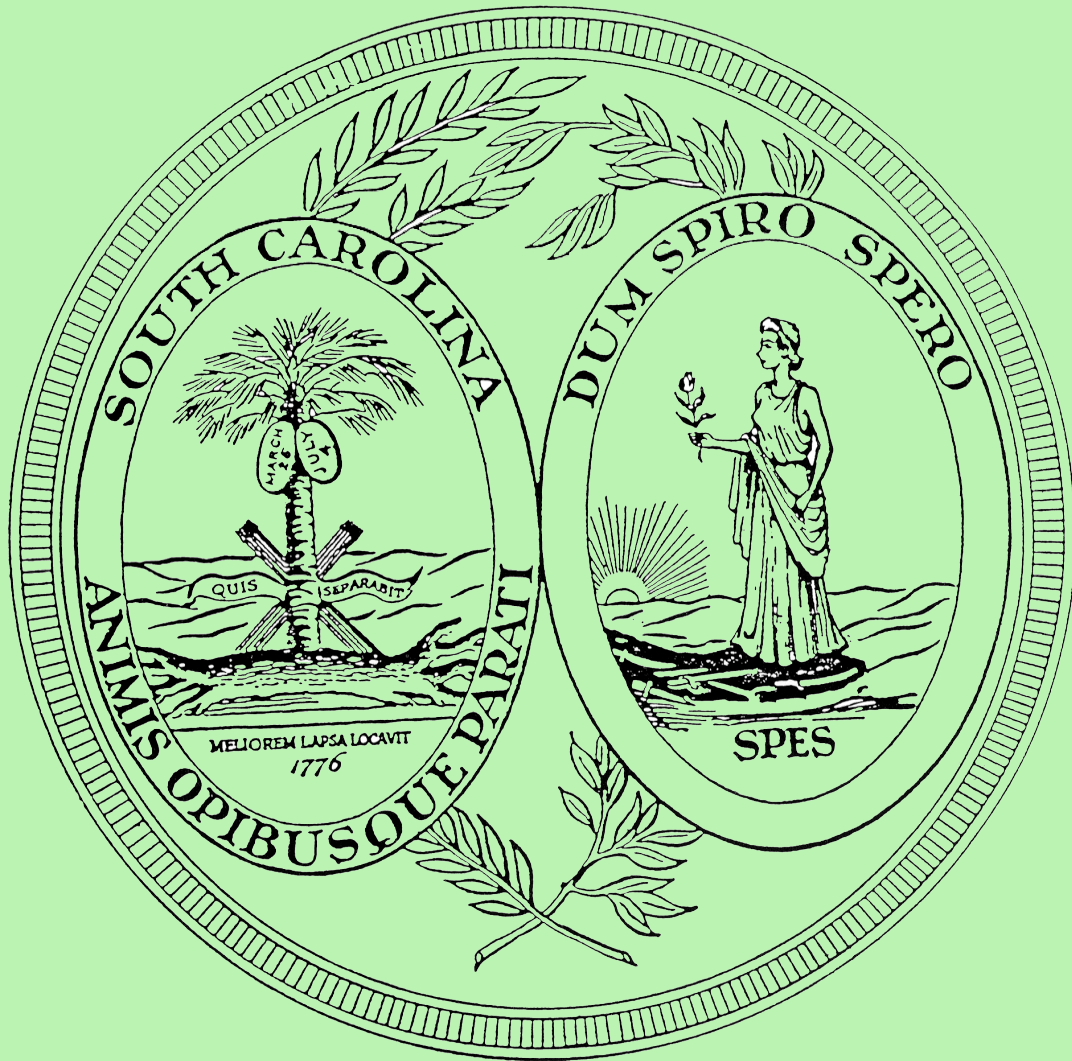




PUBLIC OFFICIAL'S
GUIDE TO COMPLIANCE
WITH
SOUTH CAROLINA'S
FREEDOM OF INFORMATION ACT

Correct as of May 2017

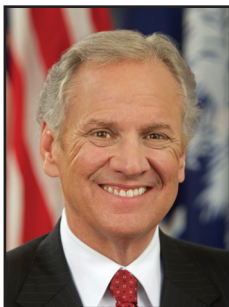
PUBLIC OFFICIAL'S GUIDE TO COMPLIANCE WITH SOUTH CAROLINA'S FREEDOM OF INFORMATION ACT

This booklet includes the full text and a plain-language guide to applications of the Freedom of Information Act concerning public meetings and public records in South Carolina. It is designed as an easy-to-use guide for both public officials and citizens.

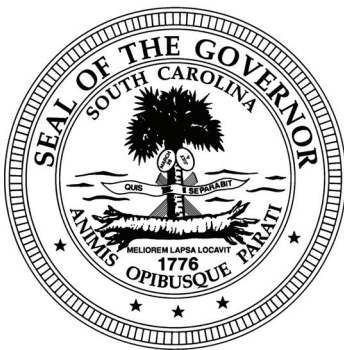
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Additional copies of this booklet are available from the South Carolina Press Association. Please call SCPA at (803) 750-9561 or email jmadden@scpress.org to request copies. The cost is \$5 each, which includes shipping and handling. Bulk discounts are available. This guide can also be downloaded for free as a PDF at scpress.org.



HENRY McMASTER
GOVERNOR



Friends,

Recently, I was pleased to sign into law a bill that modernizes and improves our state's Freedom of Information Act (FOIA). This updated FOIA guide will serve as a wonderful resource for public officials in South Carolina.

The new law will allow state and local government agencies to become more responsive and reliable in providing easier and less costly access to public information and documents. I would like to thank the South Carolina Press Association for its hard work on making this FOIA reform a reality.

As public servants we should always endeavor to maintain the public's trust and confidence in their government. In that spirit, I hope you will remember "When in doubt – disclose."

Yours very truly,

A handwritten signature in blue ink, reading "Henry McMaster". The signature is fluid and cursive, with a large initial "H" and "M".

Henry McMaster
Governor



AN INTRODUCTION TO THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT

There should be no need for the state to have a Freedom of Information Act. Clearly, our founding fathers knew that a government operating behind closed doors, unchecked by and unaccountable to its citizenry, is not a government of, by and for the people. Rather, it is a government of, by and for itself. But time and again, evidence tells us our forefathers' intentions in framing the Constitution need shoring up with individual states' Sunshine Laws.

Borrowing from human nature, there is a tendency among governments at all levels, when allowed to operate in the dark, to gravitate under a shroud of secrecy. As a result, and all too often, elected and appointed bodies begin to see themselves as more than what they are, more than what they were intended to be, creating a disconnect from the very people for whom they work and to whom they are accountable. Our state's Freedom of Information Act (or Sunshine Law) was born in 1976, appropriately it would seem, during our nation's bicentennial, and has since been revised and updated on several occasions.

It is a fluid document that must continue to be updated and revised, especially with the changes wrought by this digital age when emails, texts, FaceTime and Skype can provide the means to skirt the law for those who want to do so deliberately. Our digital era also reduces what was largely a paper filing system, making it far easier not only to locate public documents, but also make them readily available, and transmittable. Finally, after a seven-year attempt, our state's FOIA laws were again revised as the Legislature gave its support to meaningful changes that were signed into law by Gov. Henry McMaster on May 19, 2017. The changes signed into law are substantial victories for the public's access to how the government operates, what it is doing, and how and where it is spending taxpayer dollars.

The amount of time public bodies and officials have to even simply acknowledge receipt of a request for information has been abbreviated from 15 to 10 business days. Exorbitant fees some officials have cobbled together in an effort to dissuade the public from accessing information have been reined in and no longer will ridiculous fees be assessed for documentation that can easily be transmitted electronically. These are but a few of the positive changes made to the law, changes that will further empower the taxpaying public.

While the FOIA is written for the people of South Carolina as a means to strengthen the people's access to public information, it is also the vehicle by which the media, long held as the people's representative as the governmental watchdog, access and share public information. As such, the media, particularly the South Carolina Press Association and its FOI committee, remain on the front line in defending the public's right to know and in leading effective changes in the state's FOIA law that strengthen public access. Such efforts are often in concert with like-minded lawmakers who recognize the need for and see the inherent value in government transparency.

This booklet spells out the state's Freedom of Information Act, plus provides clarity regarding the law's intent and application, with additional plain-language text. The booklet's intent is to help guide both the public and governmental bodies through the law's intent in an effort to keep government operating as it should – openly, honestly, transparently and for the people it serves.

As a newspaper journalist for more than 30 years, I leave you with the words of President Thomas Jefferson, who made no secret of his emphatic belief in the need for open government:

"The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, & to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers & be capable of reading them."



**BY RICHARD
WHITING**
CHAIR, S.C. PRESS
ASSOCIATION FREEDOM OF
INFORMATION COMMITTEE,
AND EXECUTIVE EDITOR
OF THE INDEX-JOURNAL
IN GREENWOOD



ALAN WILSON
ATTORNEY GENERAL



Dear Public Official:

The Freedom of Information Act (FOIA) was enacted to provide direct access to the functions of government to the general public and the press. Recently, the General Assembly enacted significant amendments to FOIA in furtherance of the State's commitment to open government and as a further recognition that sunlight is essential to the survival of our representative democracy. Government agencies and public officials have a duty to disclose any public information requested through FOIA unless the information is protected from disclosure by law.

While drafting South Carolina's FOIA, the General Assembly found the following:

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. (S.C. Code § 30-4-15)

As public officials, the people of this State have placed a great amount of trust in our ability to perform the tasks of government. In turn, we have an obligation not only to adhere to the letter of the law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public records.

The Attorney General's Office uses and recommends the following FOIA guidelines:

- When in doubt, disclose the public record
- When in doubt, post the time, place, and purpose of the meeting
- When in doubt, open the meetings to the public

The following guide provided by the S.C. Press Association should answer the majority of questions you may have regarding FOIA requests. When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public.

Sincerely,

Alan Wilson
Attorney General

The exact words of the law are shown in regular type. Plain language explanations are printed in italic type within the double rules above the section to which they refer.

FREEDOM OF INFORMATION ACT

South Carolina Code of Laws – Title 30, Chapter 4

SECTION 30-4-10. Short title.

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

The following section should be considered the Golden Rule for government officials who are trying to obey the law and follow the spirit of the Freedom of Information Act. Whether you’re deciding to open a meeting or how much to charge for producing documents, these words explain the intent of the law. The section spells out the basic premise behind the FOIA and should be used when in doubt about whether an official action passes FOIA muster. Public officials who take this section to heart will seldom find themselves at odds with the public, the news media or the courts on FOI matters.

SECTION 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.

The next section defines a public body. If a body is supported by public funds, even in part, or expends public funds, it is subject to the FOIA. Calling your group or meeting something other than its common name does not relieve it from responsibility. It simply does not matter what the group is called – including study committee, ad hoc committee or advisory committee. It is the composition, not the name, that is the deciding factor. Calling a meeting a “work session” does not exempt it from the FOIA. The section also says that if you are involved in health care, such things as medical disciplinary matters, case evaluations or peer reviews are exempt from the FOIA.

SECTION 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 purpose of this chapter.

The definition of “person” also includes businesses and organizations.

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

This subsection defines public records covered by the FOIA. These include all types of records, including digital data, prepared by or in the possession of a public body. There are exceptions, including some domestic security information.

(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 nonidentifying 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.

Here the FOIA clears up any doubt about what constitutes a meeting. Some public bodies have had difficulty determining whether they were actually meeting or not. Under terms of this subsection, you are having a meeting when you have a quorum – enough present for an official vote – regardless of whether you are meeting in person, at a social gathering or on a conference telephone call. In other words, if you’re discussing public business and you have a quorum present, such meetings should be announced to the public and press beforehand and be open.

(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.

No complicated language here: A quorum is a simple majority unless some other section of the law states otherwise.

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

The next section sets basic rules for access to public records. It says any person has the right to inspect a public document unless it is specifically exempt by other parts of the law. It also specifies that an individual has the right to inspect, copy or receive a public record by electronic transmission. However, the law expressly states that a public body is not required to create an electronic version of a public record where one does not exist. It also bars incarcerated individuals from submitting FOIA requests.

SECTION 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, 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 rights, 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.

The message below is that you may charge for searching, retrieving, redacting and copying records. But charging is not mandatory. While a public body may not charge a fee to review a record to determine if it is subject to disclosure, under the most recent amendment, a public body may now charge for the time it takes to redact information in the record that is to be withheld. Public bodies cannot charge one fee for one person and a different fee for another. The law requires public bodies to develop and post online a schedule of the fees for fulfilling FOIA requests, including the fees for searching, retrieving, redacting and copying records. The law states that the production fees should be based on the hourly wage of the lowest paid staff employee who has the skills and training to fulfill the request. The law limits the copy rate to not exceed the prevailing commercial rate for making copies (rate charged by local commercial copiers like Staples). Copy charges may not apply for records transmitted electronically. The law states that records must be furnished at the lowest possible cost and in a convenient and practical form. There is also a provision to provide the documents free when the information is "primarily benefiting the general public." News reports based on public documents almost always benefit the public. Fees may not be charged for examining and reviewing a document to see if it is subject to disclosure. The law limits deposits, if any, to no more than 25% of the reasonably anticipated cost for gathering and reproducing the records.

(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 benefiting 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.

Public bodies must respond to a written FOIA request in a timely fashion but no longer than 10 business days unless the requested record is more than 24 months old, in which case the deadline is 20 business days. If no response is received within the set limits, the request must be considered granted for nonexempt records or information. The public body is not required to make decisions about how a record may need to be redacted within this response period. The law requires the public body to produce the requested records within 30 calendar days from the date it initially responds that the request will be fulfilled. When the public body requires a deposit, it must produce the records within 30 days of receiving the deposit. That deadline is 35 days for records that are more than 24 months old. The law allows production and response/determination timelines to be extended by written mutual consent.

(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 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. 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.

This section requires that certain basic records be made available to the public during business hours without a written request. There is no waiting period to view these records. These records are: minutes of meetings, documents distributed to or reviewed by members of a public body during a public meeting, records containing basic details of a crime and documents showing who is being held in jail. To ease the burden on public officials, there are time limits as to how far back these records must be kept ready for immediate access. While providing access to these records on a publicly available website complies with this requirement, a public body is still required to produce the documents upon request.

(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 a 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.

(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.

This section begins the list of documents exempt from the FOIA. It points out that exemptions are not mandatory and a public body may release exempt documents. Please note that the S.C. Supreme Court, in Bellamy v. Brown, ruled that a public official faces no liability for releasing a public document.

SECTION 30-4-40. Matters exempt from disclosure; law enforcement records.

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

If you're doing business or dealing with a company whose proprietary interests are contained in records, those documents do not have to be made public. Other documents exempt from the law are records containing paid subscriber information and customer lists. The definition of trade secret establishes the outer limit of what may be withheld.

- (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 service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards. They not only need to be clean in the performance of their duties but they need to be perceived as clean. Private details about public officials, when such information has no bearing on official duties, may be withheld. The law exempts from release audio recordings of a victim's dying statements over a 911 call, and requires that they be redacted from any audio recording before production unless a victim's next of kin waives privacy.

(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 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.

The following list of law enforcement records allows secrecy for information about: informants, information that may lead to an arrest or prosecution, special investigation methods, information that could lead to personal harm, and intercepted communication. The law expands the list of law enforcement-related exemptions to include records compiled for law enforcement purposes where production would interfere with law enforcement proceedings, deprive someone of a right to a fair trial, constitute an unreasonable invasion of privacy, or disclose techniques and procedures for investigations or prosecutions where the disclosure would "risk circumvention of the law."

(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, 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.

Here's where it becomes necessary to be familiar with other sections of law where FOIA exemptions exist. Those include: Social Security numbers, medical peer review documents and student academic records.

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

If there's a contract or a property sale being negotiated, such records may be sheltered from view until after the deal is done. Certain confidential proprietary information, such as a loan application, is not required to be disclosed.

(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.
-

Some years ago the salaries paid to public officials were easily kept from public view, except for those paid to agency or department heads. Then along came Jehan Sadat, widow of former Egyptian President Anwar Sadat and instructor at the University of South Carolina. Records of her salary and perks were withheld from the public and news media and an FOIA lawsuit was brought. Under a landmark ruling, the records were opened and they showed that Mrs. Sadat was paid an amazingly high salary and had other lavish benefits. The attention brought to this case prompted the General Assembly to revise this section of the law to make certain salaries public record within certain limits.

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

It is worth noting that the word compensation is used here, not merely "salary." Such income may include honoraria, payment for speeches and performances, etc. The public is entitled to know the "exact compensation" paid to such persons. Part-time employees such as Mrs. Sadat would be clearly covered by this section.

(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;

Classified and unclassified employees not covered by subsection A above are covered under this language if they make between \$30,000 and \$50,000 annually. Such government salaries are public record in ranges with \$4,000 increments.

(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;

Classified employees who make less than \$30,000 annually may have their salaries disclosed according to classification and longevity.

(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;

Unclassified employees and contract teachers who make less than \$30,000 per year may have their salaries released in ranges starting at \$2,000 and increasing in stages of \$4,000.

(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.

The following section ensures that agency or department heads are clearly defined.

(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.

Because some legal documents should be kept confidential to protect lawyer-client privilege, this section was placed in the FOIA. It was not put there, however, to protect all documents ever handled by a lawyer or his staff.

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

This is where the General Assembly exempts itself from the FOIA when it comes to legislation in progress. Other supporting information kept by lawmakers, however, is probably available under the FOIA.

(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.

This provides access to financial details on economic development agreements and applies at all levels of government.

(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.
-

If there were a way to determine the chances of getting audited by the tax man, the language below keeps the public and press from finding it.

(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.

This language was placed in the FOIA to protect the identity of university donors, except those who do business with a school or other arm of government. The reasoning behind not protecting those with business ties is obvious – the legislature wants to make sure there is no quid pro quo for gift givers.

(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 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.

This language refers to other sections of S.C. law dealing with discussion of investment of retirement funds.

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

This section exempts employment applications from release except for information regarding persons seriously considered for a position. It requires that all material relating to no fewer than three final applicants for a public job must be made public. Certain material, including tax or medical records can be blacked out before release.

(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.

This section of the law shields from view research records and data collected by faculty members at state institutions of higher education. This exemption does not deal with financial or administrative records – just the research material itself.

(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.

Here the Legislature exempts from release the names of environmental whistle blowers and others making complaints to state regulatory agencies.

(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.

The following exemptions deal with reports and plans for investment of endowment and pension funds [Section 16], bridge structural plans and designs [Sections 17(A-B)] and autopsy images but not reports [Section 18]. The S.C. Supreme Court ruled in 2014 that autopsy records are medical records and may not be disclosed.

(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 an 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.

This is a very important clause in the FOIA. It tells government officials and employees that they can only withhold those portions of records that are exempt from disclosure. In other words, if parts of the record or document are not exempt, those portions must be made available. Exempt portions may be blacked out, or redacted.

(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.

Unlike other records, which may be withheld from public inspection and copying, those records identified in 30-4-45 (which pertain to facilities vulnerable to terrorism) must be withheld.

(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.

Certain information regarding facilities vulnerable to terrorism must not be provided except to government authorities or people who live or work within a “vulnerable zone.”

SECTION 30-4-45. Information concerning safeguards and off-site consequence analyses; 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.

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.

In the following section, the Legislature makes certain that specified types of information are clearly public records. The list is very straightforward and includes all information about the expenditure and receipt of public funds.

SECTION 30-4-50. Inclusions; law enforcement records; judicial relief.

(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;

The law adds dashcam video to the list of public documents subject to disclosure under the FOIA, and outlines how a law enforcement entity may apply to the circuit court for an order preventing disclosure. A court may only order a video not be disclosed if there is clear and convincing evidence that the recording is exempt, and its exemption outweighs the public's interest in disclosure.

- (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 within fifteen days (excepting Saturdays, Sundays, and legal public 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 released, 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.

The following subsection is on the books at the behest of law enforcement officials who want to keep certain businesses from getting the names and addresses from incident reports and using that information to solicit business. The key words here are "commercial solicitation." Neither the general public nor the press are affected. For additional code statute on commercial solicitation from other public records, see page 21 to review 30-2-50.

(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.

The following section mandates that state, county and city governments are forthcoming of any deals they cut with businesses or industries they are recruiting. Once the deals are cut, the terms are public record, along with fiscal impact statements that outline the effect on the tax base. Trade secrets, as defined in Section 30-4-40, including marine terminal service agreements, may remain closed to the public along with proprietary corporate information. Documents pursuant to the final deal may also remain secret as is specified earlier in the FOIA.

SECTION 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 any 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.

The next sentence presents a simple statement of purpose regarding meetings: THEY ARE OPEN unless otherwise specified.

SECTION 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.

The following section would give the governor the option of closing his or her cabinet meetings unless they are convened to act upon a matter over which the governor has granted the cabinet jurisdiction or advisory power. Most governors favor open government so this section would clearly present a conflict should cabinet meetings be closed in the future.

SECTION 30-4-65. Cabinet meetings are 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.

Meetings must start in public, but may be closed for certain, specified discussions.

SECTION 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:

This exemption deals with individual employment matters. However, employees have the right to demand an open hearing.

- (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.

This section addresses exemptions for discussions related to contract negotiations and the receipt of legal advice. Contracts are open once they are entered into, but may be discussed behind closed doors. Note that any vote on a contract must be taken in public. Public bodies may receive legal advice behind closed doors when it relates to a pending claim, the position of the public body in an adversarial matter or any matter covered by attorney-client privilege. Such exemptions are put into the law to provide shelter when necessary. Having an attorney present is not a carte blanche excuse for secrecy.

- (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.
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When it comes to government security, it is reasonable to expect discussions of it be held in private.

- (3) Discussion regarding the development of security personnel or devices.
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This subsection protects discussions that may lead to criminal prosecution.

- (4) Investigative proceedings regarding allegations of criminal misconduct.
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This is a business recruitment/economic development exemption. Competition to bring business and industry into a state, county or community can be intense. Other government entities may be trying to lure the same company so it is understandable that premature knowledge of the deal could harm such efforts. Once an industrial contract is entered into, it is open to the public under Section 30-4-40(a)(5).

- (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.
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Certain meetings to discuss investment of public employee retirement funds may be closed to the public.

- (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).
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There are two keys for public bodies preparing to enter an executive session: "votes" and "specific purposes." To adjourn into executive session, a vote must be taken in public. The only actions that can be taken in executive sessions are to adjourn or return to public session. The law says the presiding officer must state the specific purpose of the executive session. This statement of specific purpose requirement is not satisfied by making a general statement such as "personnel matter" or "contractual matter." However, the identity of individuals or firms otherwise shielded from release need not be disclosed. Finally, no informal polling about a course of action may be taken in executive session.

(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.

Some public bodies have abused the FOIA through "chance" meetings at parties, over meals or through telephone or digital conferences. This kind of activity is illegal and the following language spells it out.

(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.

The next sentence gives public bodies the right to expel disruptive people.

(d) This chapter does not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

The state Constitution lets the General Assembly or houses thereof have executive sessions. Some legislators believe such meetings run contrary to the concept of open government. But these secret meetings are allowed.

(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).

This section of the FOIA is important, particularly for the staff employed by public bodies. It spells out notice requirements for meetings and the content of such notices. It says an agenda should be made available at least 24 hours before scheduled meetings. For special meetings, notice of the time, place and agenda must be given. Again, the deadline is no later than 24 hours in advance. Emergency meetings are the exception and they can be held on a moment's notice, but the purpose must be clearly of an emergency nature. Meeting notices must be in writing. Agendas can be amended within 24 hours with a 2/3rds vote. If a final action is added, and there is no chance for public comment, a finding of an emergency or exigent circumstance is required. See chart on page 23 for additional information.

SECTION 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. 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 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.

Standing legislative committees must post notices of their meetings while the General Assembly is in session or when special meetings are called. Subcommittees should also give notice during the session if "practicable."

(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.

This subsection covers all other non-legislative subcommittees, which are required to give notice in a reasonable and timely fashion.

(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.

If there were any doubt about meeting notices being in writing, this clears it up. Such efforts must include posting a meeting announcement where the public body commonly meets.

(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.

Here's where some public bodies cross swords with citizens and the press. This area of the law requires that public bodies notify those who ask for notification and that they record, in their minutes, that such efforts were made and how they were made. Public bodies that ignore or forget this requirement can expect to hear from aggravated citizens and reporters.

(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.

The following section requires that written minutes be kept of all public meetings.

SECTION 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.
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The public and press are entitled to copies of minutes and they should be available soon after the meeting. Minutes of meeting for the preceding six months are to be made available for inspection without a written request being made [30-4-30(d)(1)].

(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 Section 30-4-70 of this chapter.

Public meetings, except for executive sessions, may be recorded by the public body or by any citizen or journalist.

(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.

This section gives any citizen the right to ask a circuit court to determine whether an FOIA violation has occurred. The statute of limitations is one year. A judge determines the appropriate relief. The law says the circuit court's chief administrative judge is required to schedule an initial hearing within 10 days of service on all parties. If the court determines it cannot reach a final decision at that initial hearing, the court may establish a scheduling order to conclude the action within six months and may extend the timeline further for good cause.

SECTION 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 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 of 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.

If a member of the public or press sues a public body and wins, or prevails in part, all costs of litigation – including attorney fees – may be awarded. Courts set such awards.

(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. 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.

The law allows a public body to request a hearing in circuit court for relief from unduly burdensome, overly broad, vague, repetitive or otherwise improper requests. It also allows a public body to request a hearing when it is unable to make a good faith determination regarding information's exemption from disclosure.

SECTION 30-4-110. Penalties, remedies.

(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.

The law allows a third party to request a hearing if it has an interest in exempt information or records that may be released as part of an FOIA request.

(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.

The law allows a court to order equitable relief, actual or compensatory damages, or reasonable attorney's fees and costs to the prevailing party. It creates a good faith finding if the court conducting the initial hearing determines that records requested are not subject to disclosure. This good faith finding protects the public body and officials from being required to pay attorney's fees and costs if the initial court's ruling is subsequently overturned on appeal.

(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 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 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.

The law eliminates a violation of FOIA as a crime punishable by jail time. If a court finds that the violation was arbitrary or capricious, it may assess a civil fine of \$500.

(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.

Following a national trend of protecting personal information, the legislature has put Social Security numbers and drivers' license photographs off limits, with the onus being placed on the state Department of Public Safety to withhold that information, including other personal data such as height, weight or race.

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

(A) This chapter does not allow the Department of Motor Vehicles 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.

SECTION 30-4-165. Privacy of driver's license information.

(A) The Department of Motor Vehicles 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.

This statute expands the crime of knowingly obtaining personal information for commercial solicitation to include information received from local governments and political subdivisions in addition to state agencies already covered by the law. It requires local governments and political subdivisions to provide notice of the prohibition against using the personal information for commercial solicitation and says they must take reasonable steps against improper access. The law does not specify what steps must be taken, but the public body's attorney should determine how this required notice should be given to those requesting information. This statement could, for example, be included in the public body's initial response or included in a form the requesting party completes when the request is fulfilled.

SECTION 30-2-50. Disclosable personal information, commercial solicitation use, local governments

(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 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.

RESPONDING TO AN FOIA REQUEST

These are some simple tips for government officials on how to respond when an FOIA request is received from the public or the news media:

1. Jot down the date on the letter immediately so you'll know later when it arrived.
2. Calculate how many "working" days, excluding weekends and holidays, between the arrival date and the end of the 10 days allowed for a reply.
3. Check to see if the information sought is available online. If so, notify requestor.
4. Check to see if the request is for copies of documents or for an opportunity to inspect documents or receive them electronically. The public and news media are entitled to all.
5. Determine whether there will be costs other than those for simple copying. You may charge a fee not to exceed the actual cost for search, retrieval, redaction and copying. Copies may not exceed the prevailing commercial rate. Keep in mind that costs can be waived if the information is in the "public interest" to release. Many citizen and news media requests fall into this classification.
6. Notify in writing the requesting party that the request has been received and give a reasonable timetable for your response, normally not to exceed 30 days. Include information about costs, including deposit, if any. Try not to wait the maximum time limit. Some public bodies tend to delay as long as possible, but this runs contrary to the intent of the law and doesn't help your relationships with the public or press.
7. Try to determine the best way to make the requested information available. In other words, a phone conversation with the requesting party might be in order.
8. Remember that the public is granted access to public records and that includes all books, maps, photos, papers, cards, recordings and electronic data, or other documentary materials in the possession of a public body.
9. Invest a little effort in being cordial. It'll be time well-spent.

SUPREME COURT'S BELLAMY V. BROWN RULING PROTECTS PUBLIC OFFICIALS WHEN RELEASING PUBLIC RECORDS

By Jay Bender

*Retired Reid H. Montgomery Freedom of Information Chair
University of South Carolina*

Many public officials are concerned that if they release information from a public record about a private citizen, they could be sued for an invasion of privacy.

In 1991, the S.C. Supreme Court decided the case of *Bellamy v. Brown*, 408 S.E.2d 219, which should give comfort to public officials wishing to disclose information contained in public records.

In that case, the court ruled that even if information identifying an individual came within one of the statutory exceptions to mandatory disclosure, a citizen identified in the record had no claim against the government for an invasion of privacy.

The Supreme Court said forcefully, "[W]e find that the essential purpose of the FOIA is to protect the public from secret government activity."

Addressing the question of the release of information that could lawfully be withheld from disclosure under the FOIA, the court said:

"The FOIA creates an affirmative duty on the part of public bodies to disclose information. The purpose of the Act is to protect the public by providing for the disclosure of information. However, the exemptions from disclosure contained in (sections) 30-4-40 and -70 do not create a duty not to disclose.

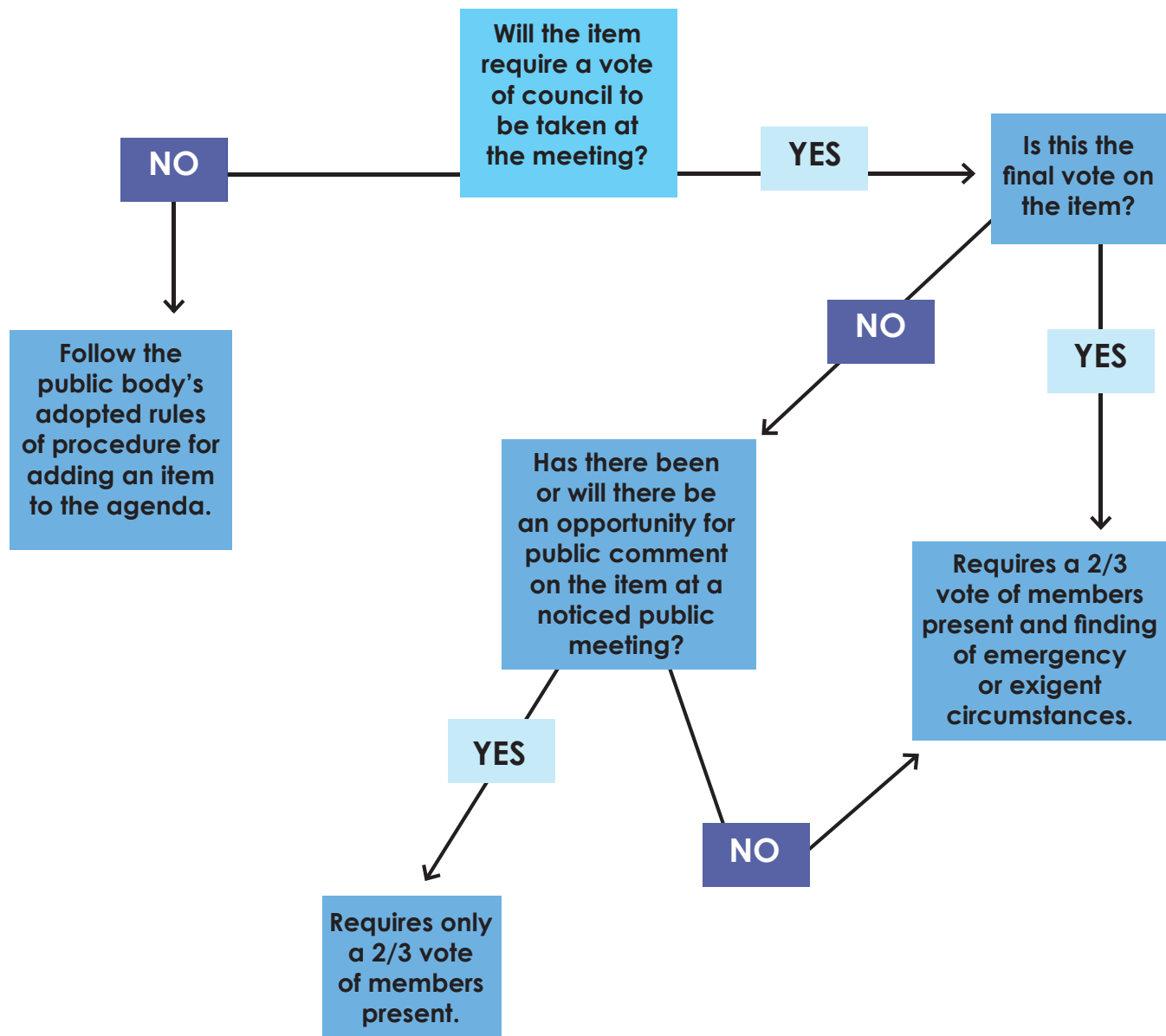
"These exemptions, at most, simply allow the public agency the discretion to withhold exempted materials from public disclosure. No legislative intent to create a duty of confidentiality can be found in the language of the Act."

Following this Supreme Court decision, the General Assembly amended the FOIA to state clearly that a public body may disclose any record that is subject to an exemption from mandatory disclosure. Section 30-4-40(a).

FLOWCHART FOR AMENDING AGENDAS

"Section 30-4-80. (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. 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 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.

PROCEDURE TO ADD ITEM TO A PUBLIC MEETING AGENDA WITHIN 24 HRS. OF THE MEETING



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