~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 24, 2016

**S. 913**

Introduced by Senators L. Martin, Davis, Hembree, Fair and Malloy

S. Printed 5/24/16--H.

Read the first time April 12, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 913) to amend Section 30-4-50 of the South Carolina Code of Laws, 1976, relating to the Freedom of Information Act, to include law enforcement vehicle mounted video, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Article 5, Chapter 23, Title 1 of the 1976 Code is amended by adding:

“Section 1‑23‑665. (A) There is created within the Administrative Law Court the Office of Freedom of Information Act Review. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Freedom of Information Act Review. The hearing officers and staff must be appointed, hired, contracted, and supervised by the chief judge of the court, shall exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge, and shall perform other functions and duties prescribed by the chief judge of the court. All employees of the office shall serve at the discretion of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Freedom of Information Act Review. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution, 1895.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23, Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Freedom of Information Act Review, at suitable locations as determined by the chief judge.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for hearing officers are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against hearing officers for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge’s or hearing officer’s spouse or guest, may accept an invitation to, and attend, a judicial‑related or bar‑related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be filed with the Administrative Law Court pursuant to the court’s appellate rules of procedure. Recordings of all hearings must be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge may not hear appeals from these decisions.

(E) A hearing officer shall issue an order containing findings of fact and conclusions of law. If a hearing officer 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 hearing officer’s determination be reversed on appeal. If a hearing officer determines that a record is subject to disclosure, the order must set forth in writing what information must be disclosed and when that disclosure must occur. If the decision of the hearing officer is not timely appealed to the Administrative Law Court, a prevailing party may apply to the Administrative Law Court to enforce the determination. If the decision is appealed to the Administrative Law Court, and the administrative law judge upholds a decision ordering disclosure of information, the administrative law judge may enforce the hearing officer’s determination as the court considers appropriate. If the administrative law judge rules that the determination must be enforced, the court may hold a person, the responsible officer, or the public official of a public body in civil contempt for failing to comply with the provisions of Section 30‑4‑30 or an order of the court relating to Section 30‑4‑30. The administrative law judge also may award attorney’s fees pursuant to Section 30‑4‑110.

(F) This section does not apply to data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera.”

SECTION 2. Section 1‑23‑500 of the 1976 Code is amended to read:

“Section 1‑23‑500. There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system. For purposes of Chapter 13 of Title 8, the Administrative Law Court is considered part of the unified judicial system.”

SECTION 3. Section 30‑4‑30 of the 1976 Code is amended to read:

“Section 30‑4‑30. ~~(a)~~(A)(1) ~~Any~~ A person has a right to inspect ~~or~~, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30‑4‑40, 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.

~~(b)~~(B) The public body may establish and collect fees ~~not to exceed the actual cost of searching for or making copies of records~~ 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. ~~Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records~~ A deposit not to exceed twenty‑five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

~~(c)~~(C) Each public body, upon written request for records made under this chapter, shall within ~~fifteen~~ ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of ~~any such~~ the request, notify the person making ~~such~~ the request of its determination and the reasons ~~therefor.~~ 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. ~~Such a~~ This determination ~~shall~~ must constitute the final opinion of the public body as to the public availability of the requested public record ~~and, if~~, 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. 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 ~~fifteen days allowed herein,~~ time set forth by this section, the request must be considered approved as to non‑exempt 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.

~~(d)~~(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; ~~and~~

(3) documents identifying persons confined in ~~any~~ 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.”

SECTION 4. Section 30‑4‑100 of the 1976 Code is amended to read:

“Section 30‑4‑100. ~~(a)~~(A) ~~Any~~ Except for violations arising from Section 30‑4‑30 or challenges to exemption under Section 30‑4‑40, a citizen of the State may apply to the circuit court for ~~either or both~~ a declaratory judgment ~~and~~, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases ~~as long as such~~ if the application is made no later than one year ~~following~~ after the date ~~on which the~~ of the alleged violation ~~occurs~~ or one year after a public vote in public session, whichever comes later. The circuit court shall also have exclusive jurisdiction to hear a challenge to (1) a determination that an organization is not a public body as defined by Section 30‑4‑20(a), and (2) data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

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

SECTION 5. Section 30‑4‑110 of the 1976 Code is amended to read:

“Section 30‑4‑110. ~~Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.~~

(A) The Office of Freedom of Information Act Review has exclusive jurisdiction over all cases, except cases involving data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera where the circuit court has exclusive jurisdiction, arising from Section 30‑4‑30 or challenges to exemptions under Section 30‑4‑40 subject only to appellate review consistent with Section 1‑23‑380. A person aggrieved by a violation of Section 30‑4‑30 or challenges to exemptions under Section 30‑4‑40 may file a request for a hearing before the Office of Freedom of Information Act Review within one year after the occurrence of the alleged violation.

(B) A citizen of this State may file a request for a hearing with the Office of Freedom of Information Act Review pursuant to Section 1‑23‑665 in the following instances:

(1) to seek specific enforcement of a request made pursuant to Section 30‑4‑30 when the public body from which the records are requested fails to comply with the time limits provided in Section 30‑4‑30(C),

(2) to challenge the reasonableness of a fee assessed pursuant to Section 30‑4‑30, and

(3) to challenge a public body’s determination that the requested information is not a public record under Section 30‑4‑20(c), or that the requested information is exempt from disclosure under Section 30‑4‑40.

(C) A public body may file a request for hearing with the Office of Freedom of Information Act Review pursuant to Section 1‑23‑665 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.

(D) 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 Office of Freedom of Information Act Review or to intervene in an action previously filed.

(E) If a person or entity seeking relief under this section prevails, the hearing officer 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 otherwise barred by a finding of good faith pursuant to Section 1‑23‑665(E).

(F) 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.

(G) If the hearing officer 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.

(H) A determination of the Office of Freedom of Information Act Review may be appealed to the Administrative Law Court or enforced by an administrative law judge pursuant to Section 1‑23‑665. The service of a notice of appeal to the Administrative Law Court acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect until the final judgement or decision of the Administrative Law Court or unless otherwise ordered by the administrative law judge. Further appeals to the Court of Appeals are subject to Section 1‑23‑610 and the South Carolina Appellate Court Rules.”

SECTION 6. Section 30‑2‑50 of the 1976 Code is amended to read:

“Section 30‑2‑50. (A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(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.

~~(E)~~ ~~This chapter does not apply to a local governmental entity of a subdivision of this state or local government.~~”

SECTION 7. This act takes effect on October 1, 2016. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 30-4-50 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO THE FREEDOM OF INFORMATION ACT, TO INCLUDE LAW ENFORCEMENT VEHICLE MOUNTED VIDEO AND AUDIO RECORDINGS IN THE LIST OF SPECIFIC CATEGORIES OF INFORMATION THAT IS TO BE MADE AVAILABLE TO THE PUBLIC, AND TO PROVIDE THAT LAW ENFORCEMENT MAY APPLY FOR INJUNCTIVE RELIEF FROM THE CIRCUIT COURT IF THERE IS CLEAR AND CONVINCING EVIDENCE OF SPECIFIC HARM FROM THE RELEASE OF THE RECORDING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 30-4-50 of the 1976 Code is amended to read:

“Section 30-4-50. (A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

(1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;

(5) written planning policies and goals and final planning decisions;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30‑4‑70;

(8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

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

(a) A law enforcement or public safety agency may apply to the Circuit Court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested 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.

(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.”

SECTION 2. Section 30-4-40 of the 1976 Code is amended to read:

“Section 30-4-40. (a) A public body may but is not required to exempt from disclosure the following information:

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

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses ~~and~~, 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.

(3) ~~Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:~~

~~(A)~~ ~~disclosing identity of informants not otherwise known;~~

~~(B)~~ ~~the premature release of information to be used in a prospective law enforcement action;~~

~~(C)~~ ~~disclosing investigatory techniques not otherwise known outside the government;~~

~~(D)~~ ~~by endangering the life, health, or property of any person; or~~

~~(E)~~ ~~disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial~~ 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.

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

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

(a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

(b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

(c) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, ‘gift to a public body’ includes, but is not limited to, gifts to any of the state‑supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

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

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

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

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

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

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

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

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

(18) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17‑5‑535 for the purposes contemplated or provided for in that section.

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

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

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

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

SECTION 3. This act takes effect upon approval by the Governor.

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