CHAPTER 4

Freedom of Information Act

CROSS REFERENCES

Appraisal Management Company Registration Act, surrender of registration, disclosure, see Section 40‑60‑530.

Compensation for victims of trafficking, identity of victim and victim’s family confidential, see Section 16‑3‑2070.

Crime victim services, confidential information, see Section 1‑7‑1110.

Department of Transportation, online transaction register of all funds expended, see Section 57‑3‑755.

Disclosure of records as to claims, confidentiality, applicability of Freedom of Information Act, see Section 16‑3‑1240.

Domestic Violence Fatality Review Committees, see Section 16‑25‑720.

Lease of Renewable Electric Generation Facilities Program, registration of facility, registry, public inspection of registry, report, see Section 58‑27‑2630.

Office of the State Inspector General, see Section 1‑6‑20.

Public institutions of higher learning, transaction register of funds expended and procurement card statement information, posting on website, see Section 59‑101‑670.

State Inspector General, confidentiality of identity of person reporting in good faith, see Section 1‑6‑100.

State Livestock‑Poultry Health Commission, confidential information, see Section 47‑4‑170.

Transaction register of all funds expended, Public Employee Benefit Authority, see Section 9‑4‑50.

Use of unfounded case information, see Section 63‑7‑940.

**SECTION 30‑4‑10.** Short title.

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

HISTORY: 1978 Act No. 593, Section 1.

CROSS REFERENCES

Applicability of the Freedom of Information Act to Public Service Commission Meetings, see S.C. Code of Regulations R. 103‑814.

Own Risk and Solvency Assessment, confidentiality, see Section 38‑13‑880.

Library References

Records 50.

Westlaw Topic No. 326.

C.J.S. Records Sections 93 to 96.

RESEARCH REFERENCES

Encyclopedias

132 Am. Jur. Proof of Facts 3d 1, Proof Supporting Disclosure Under State Freedom of Information Acts.

110 Am. Jur. Trials 367, Litigation Under Freedom of Information Act.

128 Am. Jur. Trials 495, Open Public Records Act Litigation.

S.C. Jur. Appeal and Error Section 25, Matters of Pre‑Trial Proceedings.

S.C. Jur. Colleges and Universities Section 24, Appointment and Removal.

S.C. Jur. Colleges and Universities Section 28, Operation.

S.C. Jur. Governor Section 15, Neglect of Office.

S.C. Jur. Medical and Health Professionals Section 30, Admissibility of Particular Evidence.

S.C. Jur. Medical and Health Professionals Section 35, Expert Testimony‑Basis of Opinion and Impeachment.

Forms

South Carolina Litigation Forms and Analysis Section 24:2 , Request for Records Letter.

South Carolina Litigation Forms and Analysis Section 24:3 , Freedom of Information Act Request Form‑South Carolina Department of Public Safety.

South Carolina Litigation Forms and Analysis Section 24:4 , Petition for Production of Records.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

The South Carolina Unfair Trade Practices Act: Sleeping Giant or Illusive Panacea? 33 S.C. L. Rev. 479, March, 1982.

Attorney General’s Opinions

The Department of Agriculture must disclose the information provided in grant applications for financial assistance under the Farm Aid Bill identified in an opinion request under the South Carolina Freedom of Information Act. S.C. Op.Atty.Gen. (October 18, 2016) 2016 WL 6300298.

An identifying code is to be placed on the driver’s license or special information card of any person who has been convicted of, or pled guilty or nolo contendere to a crime of violence defined by Section 16‑23‑10, and the Department of Motor Vehicles is required to disclose the identifying code to the public pursuant to the Freedom of Information Act. S.C. Op.Atty.Gen. (April 5, 2011) 2011 WL 1740749.

The authority of a college president or the college’s board of trustees in matters involving tenure and contracts of employment depends upon how much authority has been delegated or retained by the board of trustees. Any limitations imposed by the Freedom of Information Act, such as ratifying action taken in executive session, must necessarily take into consideration delegation of authority, which would be a factual determination made on a college‑by‑college basis. 1986 Op. Atty Gen, No. 86‑8, p 36.

The disclosability of prefiled indictments under the state Freedom of Information Act is to be determined by the clerks of the courts, subject to judicial scrutiny. 1989 Op. Atty Gen, No. 89‑16, p 44.

The confidentiality requirements of Sections 56‑5‑1340 and 56‑5‑1360 should be construed as being applicable only to accident reports made by individuals involved in an accident and are inapplicable to those reports filed by law enforcement officers. Accident reports filed by law enforcement officers pursuant to Section 56‑5‑1270 are not confidential. 1986 Op. Atty Gen, No. 86‑23, p 82.

Under South Carolina’s Freedom of Information Act, final order or opinion issued in disciplinary proceeding by State licensing board or agency is public information. 1984 Op. Atty Gen, No. 84‑61, p. 150.

South Carolina Department of Social Services may release copies of cost reports, filed by provider nursing homes under Title XIX of Social Security Act (Medicaid), to public without violating either state or federal Freedom of Information Act, privacy right, or property right of provider nursing home services. 1984 Op. Atty Gen, No. 84‑79, p. 195.

Public body (legislative delegation) is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op. Atty Gen, No. 84‑111, p. 256.

Most school records should be subject to disclosure to members of the legislative delegations under the Freedom of Information Act and when otherwise directly related to their duties, except when barred by law from release, and these records should also be available to school trustees except when disclosure is barred. 1983 Op. Atty Gen, No. 83‑10, p. 23.

A committee may be subject to the Freedom of Information Act if it is supported in whole or in part by public funds, or if it expends public funds. 1983 Op. Atty Gen, No. 83‑39, p. 59.

The Freedom of Information Act applies to any meeting of a public body, whether the meeting is designated as formal or informal and whether action is taken upon public business or merely discussed. 1983 Op. Atty Gen, No. 83‑55, p. 81.

Freedom of Information Act is applicable to a breakfast meeting held by a member of the General Assembly with the City Council, Mayor, and Public Service District Commissioners to discuss possible legislation that directly affects or concerns these bodies. 1983 Op. Atty Gen, No. 83‑100, p. 172.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976‑77 Op. Atty Gen, No. 77‑133, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Section 37‑6‑117, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976‑77 Op. Atty Gen, No 77‑132, p 111.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

The Freedom of Information Act offers no guidance as to how a public body is to establish its agenda or how a member of the public will be allowed to participate at a meeting. It would be up to a court to review the policy and determine whether such is a reasonable policy, considering all attendant facts and circumstances. 1992 Op. Atty Gen No. 92‑40.

Telephone bills of public agency are considered public records and subject to disclosure under Freedom of Information Act. Section 30‑4‑40(a)(2) would not present valid reason, absent some specific showing to contrary, to withhold telephone billing records. 1993 Op. Atty Gen No. 93‑17.

Freedom of Information Act makes no distinction between members of public, candidates for elected public office, members of legislature, or other categories of requestors as to who may be able to inspect or copy records of public body. 1993 Op. Atty Gen No. 93‑63.

NOTES OF DECISIONS

In general 1

1. In general

A declaratory judgment action under the Freedom of Information Act (FOIA) to determine whether certain information should be disclosed is an action at law. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Declaratory Judgment 253

The essential purpose of the Freedom of Information Act (FOIA) is to protect the public from secret government activity. Perry v. Bullock (S.C. 2014) 409 S.C. 137, 761 S.E.2d 251. Records 50

Because the Freedom of Information Act (FOIA) is remedial in nature, it should be liberally construed to carry out the purpose mandated by the legislature. Perry v. Bullock (S.C. 2014) 409 S.C. 137, 761 S.E.2d 251. Records 50

Former tax assessor could not rely on alleged violations of the Freedom of Information Act (FOIA) by county administrator and council to seek damages for her termination. Antley v. Shepherd (S.C. 2002) 349 S.C. 600, 564 S.E.2d 116. Counties 67; Public Employment 256

**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.

HISTORY: 1987 Act No. 118, Section 1.

Library References

Records 50.

Westlaw Topic No. 326.

C.J.S. Records Sections 93 to 96.

LAW REVIEW AND JOURNAL COMMENTARIES

Let the sun shine: Reforming South Carolina’s Freedom of Information Act to promote transparency and open government. Jennifer Jokerst, 65 S.C. L. Rev. 795 (Summer 2014).

Attorney General’s Opinions

Overview of the South Carolina Freedom of Information Act with respect to meetings. S.C. Op.Atty.Gen. (July 6, 2015) 2015 WL 4497735.

Discussion of the Freedom of Information Act and financial records relating to a city’s Drug Fund. S.C. Op.Atty.Gen. (November 28, 2012) 2012 WL 6218332.

Presuming all other Freedom of Information Act requirements are satisfied, the Bamberg Board of Public Works may hold its meetings via telephone conference call. S.C. Op.Atty.Gen. (August 28, 2012) 2012 WL 3875118.

The Jenkinsville Water Company is a public body and is required to comply with the Freedom of Information Act. S.C. Op.Atty.Gen. (August 8, 2011) 2011 WL 3918171.

A court would probably conclude that videotaped security footage from a jail’s booking area and other areas would not generally be considered private and would therefore be subject to disclosure. S.C. Op.Atty.Gen. (June 21, 2011) 2011 WL 2648720.

Inmates’ personal telephone calls should be construed as being subject to disclosure, especially where some form of express or implied consent can be construed to have been in place. S.C. Op.Atty.Gen. (June 21, 2011) 2011 WL 2648720.

The list of school district employees, including teachers and administrators, who make over $50,000.00 a year should be disclosed under the Freedom of Information Act; including those who have retired and entered the Teacher and Employee Retirement Incentive (TERI) program and those who have completed the TERI plan and are employed on a contractual basis. S.C. Op.Atty.Gen. (May 12, 2010) 2010 WL 2320803.

The Freedom of Information Act offers no guidance as to how a public body is to establish its agenda or how a member of the public will be allowed to participate at a meeting. It would be up to a court to review the policy and determine whether such is a reasonable policy, considering all attendant facts and circumstances. 1992 Op. Atty Gen No. 92‑40.

The disclosability of prefiled indictments under the state Freedom of Information Act is to be determined by the clerks of the courts, subject to judicial scrutiny. 1989 Op. Atty Gen, No. 89‑16, p 44.

A public body is precluded from taking formal action or a vote except in public session. Because the distinction between purely procedural matters and “formal action” is often not clear, a public rather than secret vote should be taken if any doubt exists, in keeping with the spirit and purpose of the Freedom of Information Act. Ad hoc committees or task forces appointed by the Mayor and City Council for information‑gathering or advisory functions would be subject to the requirements of the Freedom of Information Act. 1988 Op. Atty Gen, No. 88‑5, p 28.

Out‑of‑court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Freedom of Information Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public; however, a court has an inherent authority to seal the records in an appropriate case. 1988 Op. Atty Gen, No. 88‑32, p 103.

An advisory committee whose assigned task is information‑gathering or advisory functions should not meet in executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. 1988 Op. Atty Gen, No. 88‑31, p 99.

NOTES OF DECISIONS

In general 1

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1. In general

Essential purpose of state Freedom of Information Act (FOIA) is to protect public from secret government activity. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 50

Purpose of Freedom of Information Act (FOIA) is to protect public from secret government activity. Wiedemann v. Town of Hilton Head Island (S.C. 1998) 330 S.C. 532, 500 S.E.2d 783. Records 50

2. Construction

Exemptions to disclosure under the Freedom of Information Act (FOIA) should be narrowly construed to not provide a blanket prohibition of disclosure in order to guarantee the public reasonable access to certain activities of the government. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Records 54

State Freedom of Information Act (FOIA) is remedial in nature and should be liberally construed to carry out purpose mandated by legislature. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 50

3. Construction with other law

State’s Freedom of Information Act (FOIA) and copyright law could be read harmoniously in such manner as to allow County to restrict subsequent commercial distribution of its multiple‑layered digital maps that were developed through its own database, by requiring citizens to sign licensing agreement, in addition to paying fee, prior to releasing the requested copyrighted material; the ability to copyright specially‑created data, as long as the public was given access to the public data, did not frustrate the purpose of FOIA. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Copyrights And Intellectual Property 6; Records 50

4. Purpose

Essential purpose of Freedom of Information Act (FOIA) is to protect the public from secret government activity. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Records 50

The purpose of the Freedom of Information Act (FOIA) is to protect citizens from secret government activity. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 50

5. Exemptions

The exemptions to state’s Freedom of information Act (FOIA) should be narrowly construed to ensure public access to documents. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 54

Any government agency attempting to avail itself of an exemption from the state’s Freedom of Information Act (FOIA) bears the burden of proving the exemption applies. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 65

6. Right of access

State’s Freedom of information Act (FOIA) grants the public an immutable right to access public records; however, this right of access is viewed differently where commercial use of public information is concerned. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 50; Records 52

7. Copyrights

It does not violate state Freedom of Information Act (FOIA) for a public entity to copyright specially‑created digital data and to restrict subsequent commercial use as long as the information is provided initially to the requesting person or entity; if an entity is allowed to copyright the specially‑created data, it is logical that the governmental entity should be allowed to enact ordinances to restrict further commercial dissemination of the information in order to protect the copyright. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 52; Records 59

County was entitled to obtain copyrights for its multiple‑layered digital maps that were developed through County’s database, and it could protect such copyrights by, for instance, accommodating Freedom of Information Act (FOIA) requests, under state FOIA statute, through licensing agreements, to the extent it could show that the material contained original material, research, and creative compilation. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Copyrights And Intellectual Property 6; Records 59

8. Abstention

Younger abstention was appropriate with respect to school administrators association’s action seeking to have South Carolina’s Freedom of Information Act declared unconstitutional under First Amendment as applied to it as a purportedly public corporation since association had already obtained the relief it sought with the federal suit through its participation in an earlier‑filed state suit; association had an adequate opportunity to raise its First Amendment arguments before the state court, and the proceeding implicated important state interests inasmuch as case revolved around the interpretation and constitutionality of a state statute that the state legislature deemed “vital.” South Carolina Ass’n of School Adm’rs v. Disabato (C.A.4 (S.C.) 2012) 460 Fed.Appx. 239, 2012 WL 11219, Unreported. Federal Courts 2615

**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.

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

(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.

(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.

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

HISTORY: 1978 Act No. 593, Section 3; 1985 Act No. 108, Section 3; 1987 Act No. 118, Section 2; 2002 Act No. 339, Section 17; 2003 Act No. 86, Section 7.

CROSS REFERENCES

Confidentiality of records identifying library patrons, see Sections 60‑4‑10 et seq.

Procurement information being a public record subject to this Chapter, see Section 11‑35‑410.

Transportation Network Company Act, local assessment fee, records, confidentiality of information, GIS file available for public use, see Section 58‑23‑1700.

Library References

Records 50.

Westlaw Topic No. 326.

C.J.S. Records Sections 93 to 96.

United States Supreme Court Annotations

Freedom of Information Act, records relating to employee relations and human resources issues, see Milner v. Department of Navy, 2011, 131 S.Ct. 1259, 562 U.S. 562, 179 L.Ed.2d 268, on remand 645 F.3d 1084.

Personal privacy, Freedom of Information Act, law enforcement records, see FCC v. AT & T Inc., 2011, 131 S.Ct. 1177, 562 U.S. 397, 179 L.Ed.2d 132.

Ethics Commission Opinions

Staff briefings of the Public Service Commission do not violate the open meeting rules of the Freedom of Information Act or the adjudicative responsibilities of the Code of Judicial Conduct. Op. S.C. St. Ethics Comm., SEC AO2015‑001, Sept. 17, 2014.

Attorney General’s Opinions

A court would likely find an audio tape recording of a school district meeting by an employee of the district to be a public record of a public body subject to disclosure under the South Carolina Freedom of Information Act. S.C. Op.Atty.Gen. (April 5, 2017) 2017 WL 1368244.

Discussion of whether toxicology reports are medical records. S.C. Op.Atty.Gen. (February 24, 2016) 2016 WL 1167292.

A homeowners association is not a governmental entity and FOIA does not apply on this basis. S.C. Op.Atty.Gen. (January 26, 2016) 2016 WL 963698.

A court will likely determine that the FOA would not apply to socializing where no business mailers are discussed or acted upon, as determined on a case‑by‑case basis. S.C. Op.Atty.Gen. (August 5, 2014) 2014 WL 3965780.

Limestone College is supported by public funds and that it is a “public body” for purposes of FOIA. S.C. Op.Atty.Gen. (March 12, 2014) 2014 WL 1398594.

Discussion of the Freedom of Information Act and financial records relating to a city’s Drug Fund. S.C. Op.Atty.Gen. (November 28, 2012) 2012 WL 6218332.

Discussion of method of voting for replacements on boards and commissions, where there is a voice vote by county council to designate a number for a vote instead of a candidate’s name. S.C. Op.Atty.Gen. (October 12, 2012) 2012 WL 5266016.

A court could reasonably conclude that names of the individuals and businesses receiving commercial loans from the City of Columbia Community Development Department are subject to disclosure. S.C. Op.Atty.Gen. (Dec. 5, 2011) 2011 WL 6959371.

Any minutes taken with regard to the South Carolina State University Board of Trustees’s actions must be preserved and must accurately reflect the Board’s actions. S.C. Op.Atty.Gen. (Sept. 8, 2010) 2010 WL 3896165.

Freedom of Information request for copies of 911 telephone conversations should be granted, where the subject of the 911 call is diseased and the request was made by the daughter of the diseased. S.C. Op.Atty.Gen. (May 17, 2010) 2010 WL 2320805.

The list of school district employees, including teachers and administrators, who make over $50,000.00 a year should be disclosed under the Freedom of Information Act; including those who have retired and entered the Teacher and Employee Retirement Incentive (TERI) program and those who have completed the TERI plan and are employed on a contractual basis. S.C. Op.Atty.Gen. (May 12, 2010) 2010 WL 2320803.

Boating accident reports filed with the DNR are disclosable under the South Carolina Freedom of Information Act. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928443.

The Real Estate Commission is a public body subject to the requirements of the Freedom of Information Act; when the Real Estate Commission is operating as an appellate or quasi‑judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or public session. 1994 Op. Atty Gen, No. 94‑22, p. 54.

Applications received from prospective appointees, by County Legislative Delegation, are considered public records under Freedom of Information Act. However, each individual application should be examined to determine whether information therein would be exempted from disclosure. 1993 Op. Atty Gen No. 93‑66.

Freedom of Information Act makes no distinction as to public record of one seeking appointment or as to one seeking election; each would be disclosable. 1993 Op. Atty Gen No. 93‑66.

Freedom of Information Act makes no distinction between members of public, candidates for elected public office, members of legislature, or other categories of requestors as to who may be able to inspect or copy records of public body. 1993 Op. Atty Gen No. 93‑63.

Names of applicants could be released under the Freedom of Information Act without any additional information. 1993 Op. Atty Gen No. 93‑66.

Telephone bills of public agency are considered public records and subject to disclosure under Freedom of Information Act. Section 30‑4‑40(a)(2) would not present valid reason, absent some specific showing to contrary, to withhold telephone billing records. 1993 Op. Atty Gen No. 93‑17.

Practice of using telephone poll to handle matters over which public body has authority would most probably not comply with Freedom of Information Act. Rather, meeting of body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation, so body may act collectively rather than its members acting individually and independently. 1992 Op. Atty Gen 92‑02.

Whether family counseling center, a private, non‑profit human services delivery organization, which receives approximately 83 percent of its funding from United Way funding, program fees from clients generated for services rendered, community contributions, and other investments, remainder of funding coming from public monies through contracts and otherwise, would be deemed “supported in whole or in part by public funds” for purposes of being subject to FOIA, remains question of fact which may require judicial resolution. Public funds received under contract for provision of specific services may be exempt from consideration; access to Department of Social Service records would show how such money was spent. Public funds provided “in‑kind” or via grants may be sufficient to bring entity under FOIA. It is suggested that center’s board of directors, working with, counsel review information and make determination whether extent of public funding would constitute support and, if so, decide how to handle requests made under FOIA. Doubt as to applicability of FOIA should be resolved in favor of openness and disclosure. 1992 Op. Atty Gen 92‑01.

Applications or resumes of candidates for position of superintendent of education are considered public records. However, school board must examine each application or resume and determine what information is or is not subject to disclosure under Freedom of Information Act. 1991 Op. Atty Gen, No. 91‑52 p 52.

Attorney General believes that notice requirement of Freedom of Information Act should be followed by public body which will re‑convene from “recess” or “adjourned” meeting wherever such re‑convened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. 1991 Op. Atty Gen No 91‑42, p 107.

While statute does not expressly address question and while courts have not yet faced issue, Freedom of Information Act seemingly would be applicable to search committee of University of South Carolina, which committee is searching for or interviewing candidates to serve as head basketball coach of university. 1991 Op. Atty Gen No 91‑42, p 107.

The Charleston Harbor Estuary Citizens’ Committee most probably would be considered a public body and thus subject to the terms of the Freedom of Information Act. 1989 Op. Atty Gen, No. 89‑96, p 259.

A public body is precluded from taking formal action or a vote except in public session. Because the distinction between purely procedural matters and “formal action” is often not clear, a public rather than secret vote should be taken if any doubt exists, in keeping with the spirit and purpose of the Freedom of Information Act. Ad hoc committees or task forces appointed by the Mayor and City Council for information‑gathering or advisory functions would be subject to the requirements of the Freedom of Information Act. 1988 Op. Atty Gen, No. 88‑5, p 28.

A school district may release the names of currently enrolled graduating seniors if the procedures for disclosure of directory information has been followed by the school district under 34 CFR Section 99.37. 1988 Op. Atty Gen, No. 88‑72, p 208.

A school improvement council would be considered to be a “public body” for purposes of the Freedom of Information Act and as such, would be subject to the requirements of the Act. 1988 Op. Atty Gen, No. 88‑14, p 50.

Neither the County Directors and Supervisors Association of the South Carolina Department of Social Services nor the South Carolina Association of County Human Services Administrators appear to fall within the definition of “public body,” and, therefore, would not be subject to the requirements of the Freedom of Information Act. The conclusion reached in a prior opinion dated April 29, 1977, relating to reimbursement of expenses for attendance at meetings (other than training) of the County Directors and Supervisors Association, would be applicable to the human services administrators association. 1988 Op. Atty Gen, No. 88‑47, p 144.

Out‑of‑court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Freedom of Information Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public; however, a court has an inherent authority to seal the records in an appropriate case. 1988 Op. Atty Gen, No. 88‑32, p 103.

Salary survey information of various local governmental employees maintained in a data base by the Appalachian Council of Governments may be released under the Freedom of Information Act. Drafts of actual salary studies should not be released until such drafts are made available to the client jurisdiction or otherwise distributed. Salary information of an entity not classified as a public body, in the possession of a public body such as the Council, would not be subject to the compensation disclosure requirements of Section 30‑4‑40(a)(6). However, because the disclosure of a private employee’s salary could constitute an invasion of privacy with respect to his financial affairs and because such information may be protected by an exemption under the FOIA, consultation with the private sector firm prior to disclosure of such salary information is recommended. 1988 Op. Atty Gen, No. 88‑42, p 127.

Add hoc committee appointed by county council to study long range planning for county is subject to requirements of Freedom of Information Act. 1985 Op. Atty Gen, No. 85‑145, p 408.

Records of marriage licenses and applications of Probate Court are public records and are subject to terms of Freedom of Information Act. 1985 Op. Atty Gen, No. 85‑63, p 173.

Certain public funds maintained by State Workers’ Compensation Fund do not appear to be confidential and are subject to disclosure under Freedom of Information Act, unless exempt under provision of Section 30‑4‑40. 1984 Op. Atty Gen, No. 84‑53, p. 132.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

Elections of Chief Commissioner, Secretary‑Treasurer, Chairman and Vice‑Chairman must be ratified in public session before their elections are effective. Because Chief Highway Commissioner is appointed officer of Commission, his selection could be made in executive session. Where member of public body asks that vote be recorded, secret ballot may not be taken. 1984 Op. Atty Gen, No. 84‑46, p. 109.

Public body (legislative delegation) is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op. Atty Gen, No. 84‑111, p. 256.

Records of Department of Mental Health which identify patients or ex‑patients are confidential by law and are not subject to disclosure pursuant to Freedom of Information Act. 1984 Op. Atty Gen, No. 84‑22, p. 63.

Tenure Committee of state college constitutes public body under Freedom of Information Act. Tenure Committee, in voting on particular individuals being granted ordinary tenure while in executive session has to consult college rules regulations and procedures to determine voting procedures. Committee must ratify in public session any formal action taken by body in executive session. Formal actions include decisions of tenure and denials of tenure. 1984 Op. Atty Gen, No. 84‑64, p. 159.

Under South Carolina’s Freedom of Information Act, final order or opinion issued in disciplinary proceeding by State licensing board or agency is public information. 1984 Op. Atty Gen, No. 84‑61, p. 150.

Under Section 30‑4‑20(a), the South Carolina Code of Laws, 1976, as amended, the South Carolina Freedom of Information Act applies to any “public body”; a “public body” is defined by statute to include any governmental body or political subdivision of the state or “...any organization, corporation or agency supported in whole or in part by public funds or expending public funds...”; case law defines a private hospital as one which is owned, maintained, and operated by a corporation without any participation by any governmental agency and receipt of public compensation does not transform a private hospital into a public institution; receipt of public funds on a contractual basis for services rendered to the county for the care of indigent patients is not “...support in whole or in part by public funds...”. In these particular circumstances, this private corporation has not assumed the status of a public body and is not subject to the requirements of the South Carolina Freedom of Information Act. 1982 Op. Atty Gen, No. 82‑15, p 18.

The South Carolina Freedom of Information Act, Section 30‑4‑10, et seq., of the South Carolina Code of Laws, 1976, as amended, encompasses telephone conference calls within the definition of the term “Meeting” found in Section 30‑4‑20(d) of that Chapter. 1981 Op. Atty Gen, No. 81‑29, p 49.

Assignment of Pages to the various Senators is information available to Members of the Senate under the Freedom of Information Act. A Member of the Senate is entitled to this information, but if it is not supplied, a remedy is not likely to be granted by the courts because of the separation of powers provision of the Constitution. 1980 Op. Atty Gen, No.80‑57, p 106.

Documents compiled in a research survey and a tabulation of the resultant responses done by the Office of the Executive Director for House Research at the request of a member of the House of Representatives concerning H. 2193 are public records and are subject to public disclosure. 1980 Op. Atty Gen, No. 80‑17, p 40.

Subcommittee meetings may be closed as they do not fall under the definition of “meeting” in the Freedom of Information Act. The receipt of staff reports for discussion and information purposes may be construed as constituting administrative briefings which may be closed to the public. If there is no valid reason why staff reports should not be public knowledge then the meetings for their receipt should be open. All documents and working papers prepared for or discussed in executive session or in an administrative briefing are not subject to immediate and mandatory disclosure under the Freedom of Information Act. 1980 Op. Atty Gen, No. 80‑19, p 43.

Solar Energy Advisory Council is not a public body within the meaning of the Freedom of Information Act. 1979 Op. Atty Gen, No. 79‑125, p 178.

Generally, telephone billing records for State agencies would be public records and thus available for public inspection under the Freedom of Information Act, unless non‑disclosure can be shown to be in the best public interest. 1976‑77 Op. Atty Gen, No. 77‑199, p 149.

Incident and Supplemental Reports prepared by Sheriff’s Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by non‑disclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976‑77 Op. Atty Gen, No. 77‑187, p 142.

Police criminal investigatory files are not subject to inspection and copying under the Freedom of Information Act, since they are most likely not “public records” within the meaning of Section 30‑3‑20 and Section 30‑3‑30 [see now Sections 30‑4‑30, 30‑4‑60 and 30‑4‑70]. 1976‑77 Op. Atty Gen, No. 77‑193, p 146.

The minutes of meetings of public bodies such as school district Board of Trustees are public records and thus available for inspection and copying by the public under Section 1‑20.1. [1976 Code Section 30‑3‑20; see now Section 30‑4‑30]. 1976‑77 Op. Atty Gen, No. 77‑154, p 129.

Both the State and Federal estate tax returns filed with the Tax Commission are public records within the meaning of the South Carolina Freedom of Information Act, and therefore must be made available to the public for examination and inspection. 1975‑76 Op. Atty Gen, No. 4320, p 139.

Records maintained in the Tax Assessor’s office of Dillon County of the number of acres or lots owned by individuals, the appraised value of such acreage or lots, and the taxes levied thereon are public records within the intent and meaning of the Freedom of Information Act and should be made available for inspection and review in accordance with the Act. 1975‑76 Op. Atty Gen, No. 4229, p 10.

The Freedom of Information Act requires disclosure of specific public employees’ salaries. 1975‑76 Op. Atty Gen, No. 4526, p 390.

The mailing list for the Department of Agriculture’s Publication “The Market Bulletin” is public information. 1975‑76 Op. Atty Gen, No. 4354, p 183.

The South Carolina Freedom of Information Act does not require disclosure of certain items in personnel files of public employees. 1975‑76 Op. Atty Gen, No. 4363, p 197.

The study of alcohol and drug abuse among students in the Sumter County school districts is subject to disclosure under the Freedom of Information Act, unless it would be adverse to the public interest to release the study publicly. 1975‑76 Op. Atty Gen, No. 4508, p 369.

Personnel records of a faculty member at a state institution of higher learning, including confidential evaluations of teaching performance, are not public records under the Freedom of Information Act if such materials are considered scholastic records, or if such disclosure is not in the public interest or if such materials are the product of a valid executive session. 1974‑75 Op. Atty Gen, No. 4191, p 242.

The Consumer Health Council does not fall under the provisions of the Freedom of Information Act if it is entirely financed by federal funds. 1974‑75 Op. Atty Gen, No. 4037, p 109.

NOTES OF DECISIONS

In general 1

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1. In general

The Freedom of Information Act (FOIA) serves the important governmental interests of providing transparency in governmental decision‑making, preventing fraud and corruption, and fostering trust in government. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1569

Plaintiff’s declaratory judgment action, seeking declaration that nonprofit corporation formed to recover and conserve Confederate submarine was a public body subject to the Freedom of Information Act (FOIA), was moot, where corporation had provided all documents requested by plaintiff in his FOIA request, and had conceded that it was a public body, as related to the present case. Sloan v. Friends of Hunley, Inc. (S.C. 2006) 369 S.C. 20, 630 S.E.2d 474. Declaratory Judgment 81

In an action seeking the review of Department of Social Services (DSS) files pursuant to the Freedom of Information Act, Sections 30‑4‑10 et seq., the Court of Appeal was obliged to affirm the trial court’s denial of the appellants’ request to review the files where they contained at least some materials exempt from the Act’s disclosure requirements, and the record failed to show that the trial court was asked to review the DSS file and separate exempt and nonexempt material; however, appellants were not precluded from reappearing before the trial court and requesting that it conduct a review to separate the material based on its exempt status. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276.

Section 12‑54‑190 does not alter the non‑disclosure provisions of Section 12‑54‑240 since the legislature could not reasonably have intended to prevent disclosure of tax commission assessments to local taxing authorities. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

The fact that the tax commission refused to sign a confidentiality agreement with a property owner was sufficient evidence on which to hold that the tax commission did not promise that the information in question would be kept confidential. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

Preliminary proposals to be placed on a school board agenda which are circulated to the school board members several days before the meeting, need not be released prior to the meeting under Section 30‑3‑20, where full disclosure is made at the meeting. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

1.5. Constitutional issues

Freedom of Information Act (FOIA) as applied to a publicly‑funded non‑profit corporation engaged in political advocacy did not unconstitutionally infringe upon the non‑profit corporation’s First Amendment speech and association rights, where FOIA served the important governmental interest of providing transparency in governmental decision‑making, preventing fraud and corruption, and fostering trust in government, and FOIA exempted certain sensitive records and meetings from public disclosure, and thus attempted to only implicate that speech and association necessary to serve its purposes. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1440; Constitutional Law 1687; Records 51

Freedom of Information Act (FOIA) only incidentally affected non‑profit corporation’s right to associate, and therefore intermediate scrutiny, rather than strict scrutiny, was the appropriate level of scrutiny to apply in determining whether application of the FOIA to a publicly‑funded non‑profit corporation engaged in political activity violated the corporation’s freedom of association, where FOIA did not bar public bodies from exercising their associational rights, nor did it require them to admit members they did not desire, rather, FOIA only indirectly impacted corporation’s associational rights by burdening its ability to effectively associate through the requirement that it open its meetings to the public. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1460

Freedom of Information Act (FOIA) was content‑neutral statute, rather than content‑based statute, and therefore intermediate scrutiny, rather than strict scrutiny, was the appropriate level of scrutiny to apply in determining whether application of the FOIA to a publicly‑funded non‑profit corporation engaged in political activity violated the corporation’s freedom of speech, where the language of the FOIA contained no indication that it was intended to or did distinguish between speech or that it placed a greater burden on any particular message, rather, the FOIA equally burdened all public bodies regardless of the content of their speech. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1685

Freedom of Information Act (FOIA) impacted the First Amendment right of association of publicly‑funded non‑profit corporation engaged in political advocacy, where FOIA required corporation to disclose records including membership lists, and FOIA’s open meeting requirement impaired corporation’s ability to effectively associate for the purpose of political and issue advocacy by requiring that all meetings be open to the public. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1460; Records 51

Freedom of Information Act (FOIA) impacted the First Amendment right not to speak publicly of publicly‑funded non‑profit corporation that was engaged in political advocacy, where, by requiring that all meetings be open to the public, the FOIA prevented private oral communication among corporation’s members, and the records disclosure requirement prevented private written communications because any such communications were subject to public disclosure. Disabato v. South Carolina Ass’n of School Adm’rs (S.C. 2013) 404 S.C. 433, 746 S.E.2d 329. Constitutional Law 1687; Records 51

2. Public body

The sheriff’s department constituted a “public body,” as defined by the Freedom of Information Act (FOIA), and thus department was subject to FOIA in action for disclosure of alleged illegal and unethical conduct of four deputy sheriffs; office of sheriff was created by state constitution, which granted the General Assembly the authority to determine their duties, qualifications, training, and compensation, and department was supported exclusively by public funds. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 51

Issue of whether nonprofit corporation that was formed to recover and conserve Confederate submarine was a public body subject to the Freedom of Information Act (FOIA), which became moot when corporation supplied information requested under the Act, was not likely to evade review, as would except issue from general rule that courts will not decide moot or academic questions, although issue was capable of repetition; if another person brought an action against corporation for a violation of FOIA, and corporation failed to produce the requested documents, the court would have the opportunity to review the issue. Sloan v. Friends of Hunley, Inc. (S.C. 2006) 369 S.C. 20, 630 S.E.2d 474. Records 63

Review committee that was composed of city employees and was created by the city manager to evaluate bids by towing companies was an “advisory committee” and thus a “public body” covered by the Freedom of Information Act (FOIA), even though no city council member belonged to the committee; the manager formed the committee to advise him on awarding public contracts, and the committee thus performed a governmental function. Quality Towing, Inc. v. City of Myrtle Beach (S.C. 2001) 345 S.C. 156, 547 S.E.2d 862, rehearing denied. Municipal Corporations 244(2); Public Contracts 188

A research foundation was a “public body” within the meaning of Section 30‑4‑20(a), even though it was a private corporation, where it was supported in whole or in part by public funds and had expended public funds. The common law concept of “public” versus “private” corporations is inconsistent with the Freedom of Information Act’s (FOIA) definition of “public body” and therefore cannot be superimposed on the FOIA. Weston v. Carolina Research and Development Foundation (S.C. 1991) 303 S.C. 398, 401 S.E.2d 161.

3. Public record

Autopsy report was “medical record” exempt from disclosure under Freedom of Information Act (FOIA); although objective of autopsy was to determine cause of death, actual examination was comprehensive, as medical information gained from autopsy and indicated in report was not confined to how decedent died, but instead involved thorough and invasive inquiry into decedent’s body that revealed extensive medical information, such as presence of any diseases or medications and any evidence of treatments received, regardless of whether that information pertained to cause of death. Perry v. Bullock (S.C. 2014) 409 S.C. 137, 761 S.E.2d 251. Records 58

In medical malpractice case against physician who delivered a child prematurely, admission of physician’s interim agreement with the Board of Medical Examiners, wherein he acknowledged his addiction to alcohol, was not precluded by state confidentiality statute, as that statute protected a patient’s medical records from unauthorized disclosure and the agreement was part of the public domain pursuant to the Freedom of Information Act. Watson ex rel. Watson v. Chapman (S.C.App. 2000) 343 S.C. 471, 540 S.E.2d 484, rehearing denied, certiorari denied. Privileged Communications And Confidentiality 256

Famous baseball player’s will, which contained his extremely rare and valuable signature, was public record subject to retention by county and state, not asset of baseball player’s estate; accordingly, county and state’s claim of ownership and possession of will did not constitute a taking of private property without just compensation. American Heart Ass’n v. County of Greenville (S.C. 1997) 331 S.C. 498, 489 S.E.2d 921, rehearing denied. Eminent Domain 2.2; Executors And Administrators 43

Freedom of Information Act (FOIA) provision permitting public body to hold closed meeting to discuss employment, demotion, or discipline of employee does not exempt internal investigation report of law enforcement agency from disclosure; report is public record, and question of its exemption must be resolved by reference to provision concerning matters exempt from disclosure. City of Columbia v. American Civil Liberties Union of South Carolina, Inc. (S.C. 1996) 323 S.C. 384, 475 S.E.2d 747. Records 60

Death certificates are not medical records in a normal sense but are statements of conclusion by persons required by law to make such findings after the death of a citizen of the state and as such are not exempt from disclosure under Section 30‑4‑20. Society of Professional Journalists v. Sexton (S.C. 1984) 283 S.C. 563, 324 S.E.2d 313.

4. Meeting

“Meetings” under Freedom of Information Act (FOIA) are not limited to instances where action is taken. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Administrative Law and Procedure 124

The convening of a County Board of Education was within the definition of a “meeting” under Section 30‑4‑20(d), thus requiring public notice to be given, where the matters on the agenda included (1) points of agreement and disagreement between the Board and a city planning committee; (2) a summary of research regarding school size; (3) operational costs at a city school as compared to other similar schools; and (4) rezoning and transporting students from the area, since the nature of the items on the agenda, together with the expressed intent to “go over each piece of information” necessarily entailed Board discussion of matters over which it had “supervision, control, jurisdiction or advisory power” involving the school. Braswell v. Roche (S.C. 1989) 299 S.C. 181, 383 S.E.2d 243.

**SECTION 30‑4‑30.** Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(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.

(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.

(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.

(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.

HISTORY: 1978 Act No. 593, Section 4; 1987 Act No. 118, Section 4; 1990 Act No. 555, Section 1; 1998 Act No. 423, Section 1; 2017 Act No. 67 (H.3352), Section 1, eff May 19, 2017.

Effect of Amendment

2017 Act No. 67, Section 1, rewrote the section, providing that electronic transmissions are included among the record formats available for inspection, providing certain limitations applicable to prisoners, providing that public bodies are not required to create electronic versions of public records to fulfill records requests, revising requirements concerning records request fulfillment fees, permitting public bodies to charge certain deposits before searching and copying public records in response to records requests, and revising the time limits and manner for responding to records requests.

CROSS REFERENCES

Access to restricted information, Department of Health and Environmental Control, see S.C. Code of Regulations R. 61‑117.

Availability of medical records to coroners of other states, see Section 17‑5‑120.

Documentation regarding accounts funded by forfeited monies and by proceeds of sale of forfeited items, as available to public under this Act, see Section 44‑53‑530.

Emergency restraining orders, procedure, see Section 16‑3‑1920.

Information available to department pursuant to this section must be made available to county coroner or medical examiner and social services department, to investigate child fatality, see Section 63‑11‑1940.

Privileged and confidential nature of records, etc. for claims filed under Section 16‑3‑1110 et seq., relative to compensation of victims of crime, see Section 16‑3‑1240.

School growth measurement system, see Section 59‑18‑1960.

Library References

Records 30, 50.

Westlaw Topic No. 326.

C.J.S. Records Sections 60, 62 to 63, 65, 93 to 96.

RESEARCH REFERENCES

Forms

South Carolina Litigation Forms and Analysis Section 24:2 , Request for Records Letter.

United States Supreme Court Annotations

Records, State law granting records access only to state’s residents did not violate Commerce or Privileges and Immunities Clauses, see McBurney v. Young, 2013, 133 S.Ct. 1709, 569 U.S. 221, 185 L.Ed.2d 758. Commerce 82.20; Constitutional Law 2950; Records 52

Attorney General’s Opinions

Discussion of a freedom of information request for drug names of pharmaceuticals dispensed at a county detention facility. S.C. Op.Atty.Gen. (December 4, 2014) 2014 WL 7210767.

Discussion of a request under the Freedom of Information Act for an incident report concerning an alleged sexual assault committed by one minor child against another that took place at a local middle school. S.C. Op.Atty.Gen. (Dec. 30, 2013) 2013 WL 6924891.

A public body, upon a written request for records made pursuant to the Freedom of Information Act, shall, within fifteen days, notify the person making the request of its determination as to the availability of the information and reasons therefore, and should a public body fail to do so, any citizen may apply to the circuit court for a declaratory judgment and/or injunctive relief. S.C. Op.Atty.Gen. (April 29, 2011) 2011 WL 1740747.

Copies of arrest warrants and incident reports maintained at the Spartanburg County Detention Center must be made available for walk‑in inspection by the media; any necessary redactions should be accomplished by the arresting law enforcement agency or any law enforcement official with supervisory authority over a particular case prior to transferring the arrest warrants and incident reports to the Detention Center. S.C. Op.Atty.Gen. (July 19, 2010) 2010 WL 3048335.

Freedom of Information Act makes no distinction between members of public, candidates for elected public office, members of legislature, or other categories of requestors as to who may be able to inspect or copy records of public body. 1993 Op. Atty Gen No. 93‑63.

Public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under Freedom of Information Act. 1993 Op. Atty Gen No. 93‑63.

Mailing lists of various publications, which would include subscriber’s mailing addresses, are disclosable unless an exception restricts public’s right to access. 1993 Op. Atty Gen No. 93‑63.

Freedom of Information Act does not contemplate release of information in appointment matters as to prospective appointees when application period has not closed by end of 15 day response period. Act appears to require that information requested be disclosed as is contemplated by Section 30‑4‑30(c). 1993 Op. Atty Gen No. 93‑66.

Freedom of Information Act makes no distinction as to who may request information under Act. 1993 Op. Atty Gen No. 93‑66.

The Taylors Fire & Sewer District may set up reasonable requirements for viewing and copying records. However, what is considered reasonable would require factual determination which this Office cannot resolve by an opinion of this Office. 1992 Op. Atty Gen No. 92‑40.

There is no distinction between permitting legislator to view file and make notes and his being provided copies of documents from file compiled by Legislative Audit Council relative to sunset review once final review is released, unless documents are accorded confidentiality by specific statute. 1991 Op. Atty Gen, No. 91‑4, p 21.

An arrest warrant or bench warrant would generally be disclosable upon its being served upon the person named in the warrant unless the information in the warrant is otherwise exempt under the Freedom of Information Act; the custodian of criminal investigatory records, such as search warrants, has the discretion to disclose such records if he or she deems that it would not harm law enforcement or the investigation. 1989 Op. Atty Gen, No. 89‑78, p 205.

Whether or not a sheriff’s department can release the tape of a 911 conversation or its contents must be determined by that agency; any decision as to nondisclosure would be subject to possible judicial review. 1988 Op. Atty Gen, No. 88‑28, p. 89.

Out‑of‑court settlement records maintained by a public agency, where the settlement involves the expenditure of public monies, are ordinarily “public records” subject to disclosure under the Freedom of Information Act unless the information contained in the settlement documents is specifically exempt from disclosure under the Act. Judicial records that contain settlement information are generally accessible by the public; however, a court has an inherent authority to seal the records in an appropriate case. 1988 Op. Atty Gen, No. 88‑32, p 103.

The Comptroller General may refer requests for information to the agency housing the original record or information; if that agency refuses to honor the request for material deemed to be disclosable under the Freedom of Information Act, the Comptroller should then make the information available. The Freedom of Information Act itself does not appear to contemplate an exchange of information among or between state agencies. The Freedom of Information Act allows for certain direct and indirect costs to be considered in establishing a fee for searching for or making copies of records. While the Freedom of Information Act does not specifically require that a request for information be made in writing, it would be a protective measure to have such requests in writing to establish the fifteen‑day response period. 1987 Op. Atty Gen, No. 87‑69, p 171.

System of allowing access to official records of Probate Court through staff member and by charging fee appears to comport with provisions of Freedom of Information Act. 1985 Op. Atty Gen, No. 85‑63, p 173.

Supplementary Homicide Reports should be disclosed under the South Carolina Freedom of Information Act. 1983 Op. Atty Gen, No. 83‑85, p. 139.

Any written request is sufficient under the South Carolina Freedom of Information Act; failure to respond to a written request may be remedied by resort to injunctive relief, so long as sixty (60) days has not elapsed from the expiration of the statutory fifteen (15) day response period; an attorney’s work product and any correspondence generated by that attorney for the public body which he represents may be removed from records to be disclosed, along with any other material violative of the attorney‑client relationship; that information is sought in furtherance of a civil law suit has no effect on the requirement for disclosure mandated by the Freedom of Information Act; medical records in the possession of a public body should not be disclosed absent consent or a court order; there is no federal legislation prohibiting the disclosure of arrest records and criminal investigation reports. 1981 Op. Atty Gen, No. 81‑64, p 91.

Consumer Complaints Received Under Section 37‑6‑117, South Carolina Code of Laws (1976), and Which Are Not Subject to the Investigatory Powers of the Administrator Under Section 37‑6‑106 are Public Records Which the Public has the Right to Inspect or Copy Pursuant to Section 30‑4‑30, South Carolina Code of Laws (1976). 1980 Op. Atty Gen, No. 80‑10, p 31.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976‑77 Op. Atty Gen, No. 77‑133, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Section 37‑6‑117, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976‑77 Op. Atty Gen, No. 77‑132, p 111.

Incident and Supplemental Reports prepared by Sheriff’s Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by non‑disclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976‑77 Op. Atty Gen, No. 77‑187, p 142.

The South Carolina Freedom of Information Act does not require the public disclosure of law enforcement records of internal investigations into allegations of peace officers’ misconduct. 1976‑77 Op. Atty Gen, No. 77‑363, p 288.

Police criminal investigatory files are not subject to inspection and copying under the Freedom of Information Act, since they are most likely not “public records” within the meaning of Section 30‑3‑20 and Section 30‑3‑30 [see now Sections 30‑4‑30, 30‑4‑60 and 30‑4‑70]. 1976‑77 Op. Atty Gen, No. 77‑193, p 146.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

A county council cannot pass an ordinance or resolution restricting public records from discovery under the Freedom of Information Act. Failing to release the contents of a proposed county ordinance, emergency ordinance or resolution until such item is brought up for a vote would violate the Freedom of Information Act, where such items are prepared and available prior to the meeting. 1976‑77 Op. Atty Gen, No. 77‑164, p 134.

The Greenwood County Hospital Board must comply with the provisions of the Freedom of Information Act, 1962 Code Section 1‑20, et seq. [1976 Code Section 30‑4‑10 et seq.], as amended. 1975‑76 Op. Atty Gen, No. 4477, p 337.

Public agencies may set up reasonable requirements for viewing and copying public records. However, care must be taken to insure that such procedures do not inordinately restrict public access to these public records. 1975‑76 Op. Atty Gen, No. 4512, p 373.

The Freedom of Information Act compels the Commission of the Blind to allow the inspection of its records used in mailing publications. 1974‑75 Op. Atty Gen, No. 3985, p 56.

The Freedom of Information Act would require disclosure of employee names at the Medical University, their position, earnings, and insurance coverage; however, information such as sex, date of birth, marital status, and number of children of the employees relates solely to private matters which do not affect the performance of any public duty. 1974‑75 Op. Atty Gen, No. 4004, p 73.

Vehicle towing records of a sheriff may be open for public inspection. Employment applications for county employees and some portions of accident reports should not be open to public disclosure. 1974‑75 Op. Atty Gen, No. 4197, p 246.

NOTES OF DECISIONS

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1 2. Constitutional considerations

Virginia’s citizens‑only Freedom of Information Act (FOIA) provision did not abridge noncitizens’ ability to engage in a common calling in violation of the Privileges and Immunities Clause; it seemed clear that the distinction Virginia’s FOIA made between citizens and noncitizens had a distinctly nonprotectionist aim, as the statute essentially represented a mechanism by which those who ultimately held sovereign power, i.e., the citizens of the Commonwealth, could obtain an accounting from the public officials to whom they delegated the exercise of that power; abrogating Lee v. Minner, 458 F.3d 194. McBurney v. Young, 2013, 133 S.Ct. 1709, 569 U.S. 221, 185 L.Ed.2d 758. Constitutional Law 2950; Records 52

Virginia’s citizens‑only Freedom of Information Act (FOIA) provision did not abridge noncitizens’ rights to own and transfer property in the Commonwealth, in violation of the Privileges and Immunities Clause, by preventing noncitizens from accessing records necessary to the transfer of property; while not available to noncitizens under the state FOIA, the documents were available to noncitizens under other state laws, and Virginia and its subdivisions generally made even less essential real estate tax assessment records readily available to all, as such records were considered nonconfidential under Virginia law and, accordingly, could be posted online. McBurney v. Young, 2013, 133 S.Ct. 1709, 569 U.S. 221, 185 L.Ed.2d 758. Constitutional Law 2950; Records 52

Virginia’s citizens‑only Freedom of Information Act (FOIA) provision did not impermissibly burden noncitizens’ ability to access the Commonwealth’s courts, in violation of the Privileges and Immunities Clause; Virginia rules of civil procedure provided for both discovery and subpoenas duces tecum, and there was no reason to think that those mechanisms were insufficient to provide noncitizens with any relevant, nonprivileged documents needed in litigation, and, moreover, Virginia law gave citizens and noncitizens alike access to judicial records, and if Virginia had in its possession information about any person, whether a citizen or a noncitizen, that person had the right under Virginia’s Government Data Collection and Dissemination Practices Act to inspect that information. McBurney v. Young, 2013, 133 S.Ct. 1709, 569 U.S. 221, 185 L.Ed.2d 758. Constitutional Law 2961; Records 52

Virginia’s citizens‑only Freedom of Information Act (FOIA) provision neither prohibited access to an interstate market nor imposed burdensome regulation on that market, and therefore did not violate the dormant Commerce Clause; Virginia FOIA merely created and provided to its own citizens copies of state records. McBurney v. Young, 2013, 133 S.Ct. 1709, 569 U.S. 221, 185 L.Ed.2d 758. Commerce 82.20; Records 52

1. In general

Under South Carolina law, the state’s request for turnover of a document pursuant to the State Records Act does not determine whether the document is a public document. In re Willcox (Bkrtcy.D.S.C. 2005) 329 B.R. 554, reversed 358 B.R. 824, stay granted 358 B.R. 835, affirmed 467 F.3d 409, stay denied 127 S.Ct. 851, 549 U.S. 1501, 166 L.Ed.2d 658, certiorari denied 127 S.Ct. 2105, 550 U.S. 904, 167 L.Ed.2d 814. Records 62

Declaratory judgment action under state Freedom of Information Act (FOIA) to determine whether certain information should be disclosed is an action at law. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Declaratory Judgment 253

Former tax assessor could not rely on alleged violations of the Freedom of Information Act (FOIA) by county administrator and council to seek damages for her termination. Antley v. Shepherd (S.C.App. 2000) 340 S.C. 541, 532 S.E.2d 294, rehearing denied, certiorari granted, affirmed as modified 349 S.C. 600, 564 S.E.2d 116. Counties 67; Public Employment 252

In an action seeking the review of Department of Social Services (DSS) files pursuant to the Freedom of Information Act, Sections 30‑4‑10 et seq., the Court of Appeal was obliged to affirm the trial court’s denial of the appellants’ request to review the files where they contained at least some materials exempt from the Act’s disclosure requirements, and the record failed to show that the trial court was asked to review the DSS file and separate exempt and nonexempt material; however, appellants were not precluded from reappearing before the trial court and requesting that it conduct a review to separate the material based on its exempt status. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276.

Section 12‑54‑190 does not alter the non‑disclosure provisions of Section 12‑54‑240 since the legislature could not reasonably have intended to prevent disclosure of tax commission assessments to local taxing authorities. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

The purpose of the Freedom of Information Act, Section 30‑4‑10 et seq. is to protect the public from secret government activity. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843. Records 50

The fact that the tax commission refused to sign a confidentiality agreement with a property owner was sufficient evidence on which to hold that the tax commission did not promise that the information in question would be kept confidential. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

Sections 30‑4‑30 and 30‑4‑40 are to be harmoniously construed to preclude disclosure of minutes of executive sessions. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

Newspaper was improperly denied access to jail log book and to meetings and minutes of meetings of local building commission. Florence Morning News v. Building Commission of City and County of Florence (S.C. 1975) 265 S.C. 389, 218 S.E.2d 881.

1.5. Construction and application

Freedom of Information Act (FOIA) is remedial in nature and should be liberally construed to carry out its purpose. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Records 50

2. Failure to respond

Under Section 30‑4‑30(c), a failure to respond within 15 days means that the disclosure of non‑exempt material at the time and place of access which the party requested is deemed approved. Litchfield Plantation Co., Inc. v. Georgetown County Water and Sewer Dist. (S.C. 1994) 314 S.C. 30, 443 S.E.2d 574, rehearing denied. Records 62

Exemptions from disclosure in Section 30‑4‑40 are absolute despite a public body’s failure to respond within 15 days as required by Section 30‑4‑30(c); exemptions in Section 30‑4‑40 cannot be waived. Litchfield Plantation Co., Inc. v. Georgetown County Water and Sewer Dist. (S.C. 1994) 314 S.C. 30, 443 S.E.2d 574, rehearing denied. Records 54

2.5. Motions to compel

Trial court abused its discretion in denying newspaper’s motion to compel disclosure of blank superintendent evaluation form from school district in newspaper’s action alleging violation of Freedom of Information Act (FOIA); motion to compel sought only the blank questionnaire, which was different from what the newspaper sought in the lawsuit itself, the school board members’ completed questionnaires. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Pretrial Procedure 371

2.75. Justiciability

Requestor’s claims for declaratory relief and injunctive relief against Department of Revenue alleging violation of the Freedom of Information Act (FOIA) was rendered moot by DOR’s subsequent compliance with requestor’s records request, where requestor received the public records sought in records request. Sloan v. South Carolina Dept. of Revenue (S.C. 2014) 409 S.C. 551, 762 S.E.2d 687. Declaratory Judgment 204; Records 63

3. Summary judgment

Cause of action against chairman of nonprofit corporation, based on corporation’s failure to comply with Freedom of Information Act (FOIA) request, was subject to summary judgment after corporation produced the requested documents, such that action against corporation was moot, where chairman was sued only in his capacity as chairman of corporation. Sloan v. Friends of Hunley, Inc. (S.C. 2006) 369 S.C. 20, 630 S.E.2d 474. Judgment 181(15.1)

4. Copying fees

Remand was necessary for trial court to determine what County’s actual photocopying costs were in relation to accommodating Freedom of Information Act (FOIA) requests, under state law, for its copyrighted multiple‑layered digital maps, and whether the fees charged were so out of line with the actual copying costs such that the fees frustrated the intent of FOIA. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 63

That County waived photocopying fees to other public entities that requested multiple‑layered digital maps that were developed through County’s database did not violate state Freedom of Information Act (FOIA), as FOIA statute specifically provided that copying fees could be waived where it was in the interest of the public to provide requested information, and providing documents for free to public entities that intended to use them for public benefit and not for commercial gain was in the interest of the public. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 68

5. Attorney fees

Requestor was prevailing party entitled to award of attorney’s fees and costs in action against Department of Revenue (DOR) alleging violation of the Freedom of Information Act (FOIA), where, although case was dismissed as moot after DOR subsequently complied with records request, requestor received the relief requested. Sloan v. South Carolina Dept. of Revenue (S.C. 2014) 409 S.C. 551, 762 S.E.2d 687. Records 68

**SECTION 30‑4‑40.** Matters exempt from disclosure.

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

(1) Trade secrets, 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, 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, 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.

HISTORY: 1978 Act No. 593, Section 5; 1980 Act No. 495, Section 1; 1987 Act No. 118, Section 5; 1993 Act No. 181, Section 489; 1994 Act No. 404, Section 1; 1995 Act No. 1, Section 11; 1996 Act No. 458, Part II, Section 31D; 1998 Act No. 371, Section 7A; 1998 Act No. 423, Sections 2, 3, 4, 5, 6; 1999 Act No. 122, Section 4; 2002 Act No. 339, Sections 18, 19, 29; 2002 Act No. 350, Section 1; 2003 Act No. 34, Section 2; 2003 Act No. 86, Sections 4, 5; 2005 Act No. 125, Section 2; 2006 Act No. 380, Section 2, eff upon approval (became law without the Governor’s signature on June 14, 2006); 2017 Act No. 67 (H.3352), Section 2, eff May 19, 2017.

Effect of Amendment

The 2006 amendment added subsection (d) relating to certain disclosures by a public body.

2017 Act No. 67, Section 2, amended (a)(2) and (a)(3), revising provisions concerning law enforcement records.

CROSS REFERENCES

Access to restricted information, Department of Health and Environmental Control, see S.C. Code of Regulations R. 61‑117.

Application for certificate of mining exploration and the certificate exempt from disclosure under this Act, see Section 48‑20‑50.

Application of this section to hazing incidents, see Section 59‑101‑200.

Body‑worn cameras, definition, guidelines, policies and procedures, fund, data release, see Section 23‑1‑240.

Domestic Violence Advisory Committee, confidentiality of information, penalty, see Section 16‑25‑370.

Domestic Violence Advisory Committee, confidentiality of meetings, penalty, see Section 16‑25‑360.

Hearings regarding disclosure, appropriate relief, civil fine for violation, see Section 30‑4‑110.

Permanent restraining orders, procedure, see Section 16‑3‑1910.

Policy of Department of Labor to fully assert exemption to Freedom of Information Act in respect to designated trade secret material, see S.C. Code of Regulations R. 71‑1106.

Privileged and confidential nature of records, etc. for claims filed under Section 16‑3‑1110 et seq., relative to compensation of victims of crime, see Section 16‑3‑1240.

Transportation Network Company Act, local assessment fee, records, confidentiality of information, GIS file available for public use, see Section 58‑23‑1700.

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C.J.S. Records Sections 99 to 111.

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70 ALR, Federal 2nd Series 493 , Construction and Application of Exemption 7(E) of Freedom of Information Act (“FOIA”), 5 U.S.C.A. Section 552(B)(7)(E), for Records or Information Compiled for Law Enforcement Purposes to Extent that Production of Such Law Enforcement Records or Information Would Disclose Techniques and Procedures For Law Enforcement Investigations or Prosecutions, or Would Disclose Guidelines for Law Enforcement Investigations or Prosecutions if Such Disclosure Could Reasonably be Expected to Risk Circumvention of Law.

8 ALR 6th 117 , What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts‑Specific Applications.

Encyclopedias

S.C. Jur. Intellectual Property Section 72, Definition of a Trade Secret.

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LAW REVIEW AND JOURNAL COMMENTARIES

Protection of trade secrets in South Carolina. 42 S.C. L. Rev. 689 (Spring 1991).

United States Supreme Court Annotations

Freedom of Information Act, records relating to employee relations and human resources issues, see Milner v. Department of Navy, 2011, 131 S.Ct. 1259, 562 U.S. 562, 179 L.Ed.2d 268, on remand 645 F.3d 1084.

Personal privacy, Freedom of Information Act, law enforcement records, see FCC v. AT & T Inc., 2011, 131 S.Ct. 1177, 562 U.S. 397, 179 L.Ed.2d 132.

Attorney General’s Opinions

Whether the Department of Education must produce the summative score or the subcomponent ratings from the educator evaluation systems. 2015 S.C. Op.Atty.Gen. (July 27, 2015) 2015 WL 4699336.

Freedom of Information Act requests for teacher evaluation results and the internal investigation of complaints concerning a certain teacher evaluation. 2015 S.C. Op.Atty.Gen. (February 19, 2015) 2015 WL 992702.

A court would likely conclude that names and identifying information concerning both current and past grand jurors are subject to exemption under FOIA. S.C. Op.Atty.Gen. (August 4, 2014) 2014 WL 3965783.

Discussion of the release of “dual arrest” incident reports under the Freedom of Information Act where one arrestee has had the records pertaining to his or her charge expunged but the other has not. S.C. Op.Atty.Gen. (Oct. 24, 2013) 2013 WL 5955672.

A “public body” for purposes of FOIA encompasses a public entity en bloc; that is, it includes the members of the entity’s governing body, if any, as well as any other officers or employees of the entity. S.C. Op.Atty.Gen. (March 4, 2013) 2013 WL 1695511.

Section 30‑4‑40(a)(13) requires disclosure even when the hiring decision is made by someone who is not a member of the entity’s governing body. S.C. Op.Atty.Gen. (March 4, 2013) 2013 WL 1695511.

Discussion of the Freedom of Information Act and financial records relating to a city’s Drug Fund. S.C. Op.Atty.Gen. (November 28, 2012) 2012 WL 6218332.

A court could reasonably conclude that names of the individuals and businesses receiving commercial loans from the City of Columbia Community Development Department are subject to disclosure. S.C. Op.Atty.Gen. (Dec. 5, 2011) 2011 WL 6959371.

Copies of arrest warrants and incident reports maintained at the Spartanburg County Detention Center must be made available for walk‑in inspection by the media; any necessary redactions should be accomplished by the arresting law enforcement agency or any law enforcement official with supervisory authority over a particular case prior to transferring the arrest warrants and incident reports to the Detention Center. S.C. Op.Atty.Gen. (July 19, 2010) 2010 WL 3048335.

Freedom of Information request for copies of 911 telephone conversations should be granted, where the subject of the 911 call is diseased and the request was made by the daughter of the diseased. S.C. Op.Atty.Gen. (May 17, 2010) 2010 WL 2320805.

Boating accident reports filed with the DNR are disclosable under the South Carolina Freedom of Information Act. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928443.

Mailing lists of various publications, which would include subscriber’s mailing addresses, are disclosable unless an exception restricts public’s right to access. 1993 Op. Atty Gen No. 93‑63.

Public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under Freedom of Information Act. 1993 Op. Atty Gen No. 93‑63.

Telephone bills of public agency are considered public records and subject to disclosure under Freedom of Information Act. Section 30‑4‑40(a)(2) would not present valid reason, absent some specific showing to contrary, to withhold telephone billing records. 1993 Op. Atty Gen No. 93‑17.

Section 50‑21‑410 would appear to prohibit the South Carolina Wildlife & Marine Resources Department from releasing the information from vessel numbering system records under an FOIA request when the request is not related to boating safety. 1992 Op. Atty Gen No. 92‑43.

Whether to disclose any portion of an application for licensure, such as financial reports, as a proprietary school is of course a decision to be made by the Commission on Higher Education, on a case‑by‑case basis. 1992 Op. Atty Gen No. 92‑23.

Without question, Freedom of Information Act applies to meetings of Legislature and its committees. 1992 Op. Atty Gen 92‑02.

Applications or resumes of candidates for position of superintendent of education are considered public records. However, school board must examine each application or resume and determine what information is or is not subject to disclosure under Freedom of Information Act. 1991 Op. Atty Gen, No. 91‑52 p 52.

Where legal counsel to Audit Council have been employed in dual capacity as both legal counsel and auditor, there would be no distinction in work done as auditor and work performed as attorney under either Freedom of Information Act or Rules of Professional Conduct governing confidentiality of attorney’s work product. 1991 Op. Atty Gen, No. 91‑4, p 21.

Decision to disclose particular record or document in given instance remains with custodian of document or record; such view constitutes a discussion of the ruling by the United States Supreme Court in Reporters Committee case and is not intended to usurp authority of custodian to determine whether disclosure is appropriate in particular instance. 1990 Op. Atty Gen No. 90‑15.

Documents at original sources, such as arrest warrants, would not be affected by Supreme Court’s ruling and would be available to public. 1990 Op. Atty Gen No. 90‑15.

Supreme Court decision concludes that each state may enact legislation authorizing disclosure of “rap sheets” to public; SLED’s regulation as to particular data to be disseminated is consistent with Court’s ruling and present South Carolina law; Supreme Court has concluded that “rap sheets” may continue to be treated as in the past by SLED, in accordance with SLED’s regulation; General Assembly could, consistent with Supreme Court ruling, specifically authorize by legislation disclosure of “rap sheets” to public. 1990 Op. Atty Gen No. 90‑15.

United States Supreme Court in Reporters Committee case construed federal law relative to criminal history records maintained by Federal Bureau of Investigation. 1990 Op. Atty Gen No. 90‑15.

An arrest warrant or bench warrant would generally be discloseable upon its being served upon the person named in the warrant unless the information in the warrant is otherwise exempt under the Freedom of Information Act; the custodian of criminal investigatory records, such as search warrants, has the discretion to disclose such records if he or she deems that it would not harm law enforcement or the investigation. 1989 Op. Atty Gen, No. 89‑78, p 205.

The discloseability of prefiled indictments under the state Freedom of Information Act is to be determined by the clerks of the courts, subject to judicial scrutiny. 1989 Op. Atty Gen, No. 89‑16, p 44.

Salary survey information of various local governmental employees maintained in a data base by the Appalachian Council of Governments may be released under the Freedom of Information Act. Drafts of actual salary studies should not be released until such drafts are made available to the client jurisdiction or otherwise distributed. Salary information of an entity not classified as a public body, in the possession of a public body such as the Council, would not be subject to the compensation disclosure requirements of Section 30‑4‑40(a)(6). However, because the disclosure of a private employee’s salary could constitute an invasion of privacy with respect to his financial affairs and because such information may be protected by an exemption under the FOIA, consultation with the private sector firm prior to disclosure of such salary information is recommended. 1988 Op. Atty Gen, No. 88‑42, p 127.

Whether or not a sheriff’s department can release the tape of a 911 conversation or its contents must be determined by that agency; any decision as to nondisclosure would be subject to possible judicial review. 1988 Op. Atty Gen, No. 88‑28, p. 89.

The Freedom of Information Act does not address whether or not individuals should be notified when there is a freedom of information request for release of their salary. Inasmuch as the disclosure of residence addresses or telephone numbers could constitute an unreasonable invasion of personal privacy, a determination as to disclosure under FOIA of residence addresses and telephone numbers must be made on a case‑by‑case basis. To the extent that today’s opinion is inconsistent with opinions dated January 25, 1978, and August 5, 1977, today’s opinion as to the release of home addresses and telephone numbers of state employees will be deemed to be controlling. An individual’s Social Security number should most probably not be disclosed pursuant to a freedom of information request. Information such as where a state employee was housed while traveling on state business would be information from a voucher and thus subject to disclosure unless exempt for a reason defined under Section 30‑4‑40. Such a determination must be made on a case‑by‑case basis. While the FOIA does not appear to prohibit the release of information over the telephone, it is advisable to provide responses to such requests in written form to lessen the chances of misunderstanding and to provide an accurate record of the information provided. Because the definition of “department head” is quite broad, a request for the disclosure of the salary for a particular individual should be referred to the agency which employs the individual to determine whether or not the individual occupies a “department head” position. 1987 Op. Atty Gen, No. 87‑69, p 171.

Inasmuch Section 42‑19‑40 contains no criminal penalty provision, a criminal prosecution cannot be undertaken pursuant to this provision for the unauthorized release of a confidential settlement agreement in a worker’s compensation case. Because only those officers possessing removal power by virtue of a statute or constitutional provision may exercise such power, it would be a matter for the Governor to determine whether the unauthorized release of a settlement agreement in violation of Section 42‑19‑40 would constitute sufficient grounds for removal. Because the Freedom of Information Act was designed to encourage the disclosure of public records and contains no specific provision dealing with the enforcement of confidentiality, either by criminal or civil remedies, the release of a settlement agreement which is confidential pursuant to Section 42‑19‑40 is not enforceable under the FOIA. 1986 Op. Atty Gen, No. 86‑55, p 162.

Certain public funds maintained by State Workers’ Compensation Fund do not appear to be confidential and are subject to disclosure under Freedom of Information Act, unless exempt under provision of Section 30‑4‑40. 1984 Op. Atty Gen, No. 84‑53, p. 132.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

Incident reports used by campus police to report activities occurring within Department of Mental Health which may have criminal implications and which contain patient identities are public information, but to extent that it contains confidential information, such information is exempt from disclosure under FOIA. 1984 Op. Atty Gen, No. 84‑85, p. 205.

Public body (legislative delegation) is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op. Atty Gen, No. 84‑111, p. 256.

Records of Department of Mental Health which identify patients or ex‑patients are confidential by law and are not subject to disclosure pursuant to Freedom of Information Act. 1984 Op. Atty Gen, No. 84‑22, p. 63.

South Carolina Department of Social Services may release copies of cost reports, filed by provider nursing homes under Title XIX of Social Security Act (Medicaid), to public without violating either state or federal Freedom of Information Act, privacy right, or property right of provider nursing home services. 1984 Op. Atty Gen, No. 84‑79, p. 195.

Under South Carolina’s Freedom of Information Act, final order or opinion issued in disciplinary proceeding by State licensing board or agency is public information. 1984 Op. Atty Gen, No. 84‑61, p. 150.

Autopsy report is not subject to public disclosure. 1981 Op. Atty Gen, No. 81‑87, p 113.

The Freedom of Information Act, Sections 30‑4‑10, et seq., does not require a public body to prepare and furnish a list that reflects information extracted from public records. 1981 Op. Atty Gen, No. 81‑20, p 38.

Age, experience, length of contract, and daily schedules of teachers are not subject to mandatory disclosure under the South Carolina Freedom of Information Act. 1980 Op. Atty Gen, No. 80‑89, p 137.

The contents of discussions originating in a valid closed session are not subject to disclosure under the Freedom of Information Act. 1980 Op. Atty Gen, No. 80‑78, p 128.

A school principal possesses the requisite amount of independent authority and control to be considered a “department head” for purposes of the new Freedom of Information Act, and hence, his salary is subject to disclosure. 1978 Op. Atty Gen, No. 78‑158, p 189.

Incident and Supplemental Reports prepared by Sheriff’s Officers and submitted for filing in the Records Division of the Police Service Bureau do not constitute public records subject to disclosure under the Freedom of Information Act if it can be shown that the public interest is best served by non‑disclosure. Any public record subject to disclosure under the Freedom of Information Act may be viewed in its original form, but records not subject to disclosure could be publicized in summary form. 1976‑77 Op. Atty Gen, No. 77‑187, p 142.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976‑77 Op. Atty Gen, No. 77‑133, p 111.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

Under Section 30‑3‑40(b) of the Freedom of Information Act, the State Budget and Control Board should vote in public session to conduct executive sessions, setting the time and place of such sessions and stating the purpose thereof. Decisions made in an executive session must be confirmed thereafter in a public open session. 1976‑77 Op. Atty Gen, No. 77‑325, p 261.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Section 37‑6‑117, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976‑77 Op. Atty Gen, No. 77‑132, p 111.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

A memorandum written by a Social Services employee to a county social services board, containing materials which are suitable for discussion by the agency in executive session, is not discoverable under the South Carolina Freedom of Information Act. 1975‑76 Op. Atty Gen, No. 4383, p 219.

Budget sub‑committees of school boards may meet in non‑public executive sessions for the purpose of discussing and drafting budget proposals where any final budget will be discussed publicly and voted on by the full school board before being adopted. 1975‑76 Op. Atty Gen, No. 4356, p 186.

Information relating to teacher pay classifications could be available to the public under the Freedom of Information Act. 1975‑76 Op. Atty Gen, No. 4362, p 196.

The Greenwood County Hospital Board must comply with the provisions of the Freedom of Information Act, 1962 Code Section 1‑20, et seq. [1976 Code Section 30‑4‑10 et seq.], as amended. 1975‑76 Op. Atty Gen, No. 4477, p 337.

The North Charleston ordinance providing for the holding of conference meetings adopts the Freedom of Information Act as a guideline for the determination of when those meetings should be public. 1975‑76 Op. Atty Gen, No. 4407, p 252.

The South Carolina Freedom of Information Act does not require disclosure of certain items in personnel files of public employees. 1975‑76 Op. Atty Gen, No. 4363, p 197.

A City Council may discuss in closed session and vote in closed session upon a proposed purchase price to be offered for the acquisition of property by the City. 1974‑75 Op. Atty Gen, No. 3928, p 12.

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1. In general

The determination of whether documents or portions thereof are exempt from Freedom of Information Act (FOIA) must be made on a case‑by‑case basis, and the exempt and non‑exempt material shall be separated and the nonexempt material disclosed. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Records 62

Whether a record is exempt from disclosure under the Freedom of Information Act (FOIA) depends on the particular facts of the case. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 54

The government has the burden of proving that a Freedom of Information Act (FOIA) exemption applies. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 65

The purpose of the Freedom of Information Act, Section 30‑4‑10 et seq. is to protect the public from secret government activity. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843. Records 50

Exemptions from disclosure in Section 30‑4‑40 are absolute despite a public body’s failure to respond within 15 days as required by Section 30‑4‑30(c); exemptions in Section 30‑4‑40 cannot be waived. Litchfield Plantation Co., Inc. v. Georgetown County Water and Sewer Dist. (S.C. 1994) 314 S.C. 30, 443 S.E.2d 574, rehearing denied. Records 54

Death certificates are not exempt from disclosure under Section 30‑4‑40. Society of Professional Journalists v. Sexton (S.C. 1984) 283 S.C. 563, 324 S.E.2d 313.

Federal government was not entitled to presumption that all sources supplying information to FBI in criminal investigation are “confidential” within meaning of federal Freedom of Information Act exemption. Source may be deemed confidential for purposes of exemption if source furnished information with understanding that FBI would not divulge communication except to extent it thought necessary for law enforcement purposes; government is entitled to presume that FBI source is confidential where circumstances support inference of confidentiality. U.S. Dept. of Justice v. Landano, U.S.N.J.1993, 113 S.Ct. 2014, 508 U.S. 165, 124 L.Ed.2d 84, on remand 873 F.Supp. 884. Records 65

2. Construction and application

The exemptions from disclosure under Freedom of Information Act (FOIA) do not create a duty of nondisclosure; at most, these exemptions simply allow public agencies the discretion to withhold exempted materials from public disclosure. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 54

The burden of proving that an exemption to disclosure exists under the Freedom of Information Act (FOIA) lies with the government. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Records 65

Exemptions to disclosure under the Freedom of Information Act (FOIA) should be narrowly construed to not provide a blanket prohibition of disclosure in order to guarantee the public reasonable access to certain activities of the government. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Records 54

Freedom of Information Act (FOIA) exemptions are to be narrowly construed so as to fulfill the purpose of FOIA to guarantee the public reasonable access to certain activities of the government. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 54

An exemption from disclosure under the Freedom of Information Act (FOIA) does not mean that the government has a duty of non‑disclosure; rather, an exemption provides the government with discretion to either withhold the record or release it. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 54

Exemptions from disclosure contained in state Freedom of Information Act (FOIA) do not create duty of nondisclosure; rather exemptions, at most, simply allow public agency the discretion to withhold exempted materials from public disclosure. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 54

The exemptions to the Freedom of Information Act, Sections 30‑4‑10 et seq., do not provide a blanket prohibition of disclosure of the entire record containing exempt material; rather, the exempt and nonexempt must be separated and the nonexempt material disclosed. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276. Records 57; Records 58; Records 62

In an action seeking the review of Department of Social Services (DSS) files pursuant to the Freedom of Information Act, Sections 30‑4‑10 et seq., the Court of Appeal was obliged to affirm the trial court’s denial of the appellants’ request to review the files where they contained at least some materials exempt from the Act’s disclosure requirements, and the record failed to show that the trial court was asked to review the DSS file and separate exempt and nonexempt material; however, appellants were not precluded from reappearing before the trial court and requesting that it conduct a review to separate the material based on its exempt status. Beattie v. Aiken County Dept. of Social Services (S.C. 1995) 319 S.C. 449, 462 S.E.2d 276.

Exemptions to the Freedom of Information Act found in Section 30‑4‑40, and specifically subsection (a)(2), create no duty of confidentiality; thus, the exemptions impose no duty not to disclose but simply allow the public agency the discretion to withhold exempted material from disclosure. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843. Records 54

Purpose of FOIA is to protect the public from secret government activity. Thus, exemptions found in FOIA section 30‑4‑40, and specifically subsection (a)(2), create no duty of confidentiality, nor impose a duty not to disclose, they simply allow public agencies the discretion to withhold exempted material from disclosure. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

Purpose of FOIA is not to protect or create duty of confidentiality, but to protect public by providing for disclosure of information. Thus exemptions from disclosure contained in sections 30‑4‑40 and 30‑4‑70 do not create a duty not to disclose, at most they simply allow public agencies the discretion to withhold exempted materials from public disclosure. Bellamy v. Brown (S.C. 1991) 305 S.C. 291, 408 S.E.2d 219. Records 54

2.5. Burden of proof

Any government agency attempting to avail itself of an exemption from the state’s Freedom of Information Act (FOIA) bears the burden of proving the exemption applies. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 65

3. Law enforcements records

Prosecutor’s belief that release the tape of emergency telephone call to 911 dispatcher prior to criminal trial would have caused him to lose his license to practice law did not justify refusal to disclose the audiotape under Freedom of Information Act (FOIA) exemption for records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime, if the disclosure of the information would harm the agency by the premature release of information to be used in a prospective law enforcement action; the Rules of Professional Conduct did not affect whether the 911 tape was exempt from disclosure under the FOIA since disclosure under the FOIA was the obligation of the government and professionalism was the personal obligation of a government attorney. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 60

The financial burden of a potential change in venue did not justify withholding tape of emergency telephone call to 911 dispatcher under Freedom of Information Act (FOIA) exemption for records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime, if the disclosure of the information would harm the agency by the premature release of information to be used in a prospective law enforcement action. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 60

The financial cost of a venue change is not the type of harm that Freedom of Information Act (FOIA) exemption is intended to prevent in protecting records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime, if the disclosure of the information would harm the agency by the premature release of information to be used in a prospective law enforcement action; rather, it is intended to prevent harms such as those caused by release of a crime suspect’s name before arrest, the location of an upcoming sting operation, and other sensitive law‑enforcement information. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 60

City was not entitled to a presumption that it would be harmed by disclosure of the contents of emergency telephone call to 911 dispatcher, even though the audiotape was to be evidence in criminal trial; the city was required to prove particular harm under Freedom of Information Act (FOIA) exemption for records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime, if the disclosure of the information would harm the agency by the premature release of information to be used in a prospective law enforcement action. Evening Post Pub. Co. v. City of North Charleston (S.C. 2005) 363 S.C. 452, 611 S.E.2d 496. Records 65

The South Carolina Law Enforcement Division’s policy of denying all Freedom of Information Act (Section 30‑4‑10 et seq.) requests for criminal investigative reports, without determining whether portions of such reports are subject to disclosure, is in direct contravention of the clear language of Section 30‑4‑40(b) providing that the public body shall separate the exempt and nonexempt material requested, and make available the nonexempt material. Newberry Pub. Co., Inc. v. Newberry County Com’n on Alcohol and Drug Abuse (S.C. 1992) 308 S.C. 352, 417 S.E.2d 870. Records 62

The South Carolina Law Enforcement Division was required to disclose the portions of a criminal investigative report requested under the Freedom of Information Act (Section 30‑4‑10 et seq.) which included documents otherwise available to the public as public records, since such records were not subject to any exemption contained in Section 30‑4‑40(a) of the act. Newberry Pub. Co., Inc. v. Newberry County Com’n on Alcohol and Drug Abuse (S.C. 1992) 308 S.C. 352, 417 S.E.2d 870.

Tape recordings and written files maintained by city police department of telephone complaints or written reports received during a certain period concerning altercations between a person making the request and her ex‑husband were exempt from disclosure by the exception in Section 30‑4‑40(a)(3)(B), where the police chief had advised the city council that the requested tapes contained very sensitive police communications and included calls from regular informants, as well as Crimestopper calls from citizens, and the council was also notified that the shooting of the person making the request was presently pending for indictment and prosecution in the next few weeks. Turner v. North Charleston Police Dept. (S.C.App. 1986) 290 S.C. 511, 351 S.E.2d 583. Records 60

4. Privacy exception

Information sought by newspaper reporter and newspaper, concerning the alleged illegal and unethical activities of four deputy sheriffs, was not exempt from disclosure under the Freedom of Information Act (FOIA) privacy exception; reporter and newspaper sought information on the performance of public duties by sheriff and his deputies and the response of the sheriff’s department to allegations of misconduct by its employees, and the manner in which sheriff and deputies prosecute their duties was of public interest and outweighed any desire sheriff or deputies had to remain out of the public eye. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 58

School board minutes protected by the attorney‑client privilege would not be released under discovery motions made in a Freedom of Information Act suit. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

5. Confidential informants

Statements given by confidential informants contained in a South Carolina Law Enforcement Division report were properly exempted from disclosure under the Freedom of Information Act (Section 30‑4‑10 et seq.) since it was not possible to disclose the substance of the statements without revealing the informants’ identities; however, not all confidential informants’ statements are per se exempt since only the identity of the informants, and not the information contained in their statements, is protected. Newberry Pub. Co., Inc. v. Newberry County Com’n on Alcohol and Drug Abuse (S.C. 1992) 308 S.C. 352, 417 S.E.2d 870.

6. Executive sessions

County board of education properly held closed meeting to interview representative of petitioners seeking dismissal of superintendent of schools, where the petitions, as presented, failed to specify the reasons for the dismissal, and the board’s only practical way to determine what those reasons might be and whether the matters to be considered did not constitute an invasion of the superintendent’s right of personal privacy was to conduct such meeting. Georgetown Communications, Inc. v. Williams (S.C.App. 1986) 290 S.C. 149, 348 S.E.2d 396.

Sections 30‑4‑30 and 30‑4‑40 are to be harmoniously construed to preclude disclosure of minutes of executive sessions. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

Administrative briefings may be held in executive session when no action is taken. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

Administrative briefings of a school board may be held in executive session. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

Proposed school budgets which are incomplete working papers used for administrative briefings, and which contain personnel matters, are privileged under this section. Cooper v. Bales (S.C. 1977) 268 S.C. 270, 233 S.E.2d 306.

7. Trade secrets

County hospital’s information relating to physicians’ salaries and to purchase price of physician practices did not amount to “trade secrets” for purposes of state Freedom of Information Act (FOIA), and thus that information was subject to disclosure, since legislature intended trade‑secret exemption to protect an organization’s studies or preparations in its quest to produce or sell its product or service to potential customers, not in its internal quest to obtain employees. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 59

If information qualifies as a trade secret under Section 30‑4‑40 of the Freedom of Information Act and is therefore exempted, the exemption creates no duty of confidentiality, and the tax commission may disclose the information in its discretion. South Carolina Tax Com’n v. Gaston Copper Recycling Corp. (S.C. 1994) 316 S.C. 163, 447 S.E.2d 843.

8. Salary information

Exemption under state Freedom of Information Act (FOIA) allowing public body to refuse to disclose compensation paid to employees unless compensation exceeds $50,000 did not provide basis for county hospital to refuse to disclose information relating to physicians’ salaries and to purchase price of physician practices, where hospital admitted that most of its physicians made more than $50,000 in compensation. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 58

9. Employment matters

Freedom of Information Act (FOIA) provision permitting public body to hold closed meeting to discuss employment, demotion, or discipline of employee does not exempt internal investigation report of law enforcement agency from disclosure; report is public record, and question of its exemption must be resolved by reference to provision concerning matters exempt from disclosure. City of Columbia v. American Civil Liberties Union of South Carolina, Inc. (S.C. 1996) 323 S.C. 384, 475 S.E.2d 747. Records 60

10. Number of applicants considered for position

Provision of the Freedom of Information Act (FOIA) requiring a public body to disclose materials relating to “not fewer than the final three applicants” in the search to fill an employment position required school district, which was searching for a school superintendent, to disclose not just the final two applicants it deemed to be “finalists,” but to disclose the final group of applicants numbered more than two, which was a group of five “semi‑finalists.” New York Times Co. v. Spartanburg County School Dist. No. 7 (S.C. 2007) 374 S.C. 307, 649 S.E.2d 28. Records 58

11. Attorney fees

After newspaper and its city editor prevailed in action under Freedom of Information Act (FOIA) to compel school district to disclose further information regarding its search for a school superintendent, trial court acted within its discretion in awarding attorney fees and costs to newspaper and the editor, even if school district acted in good faith based on its reasonable understanding of the governing section of FOIA. New York Times Co. v. Spartanburg County School Dist. No. 7 (S.C. 2007) 374 S.C. 307, 649 S.E.2d 28. Records 68

12. Attorney‑client privileged documents

Genuine issues of material fact as to whether superintendent evaluations that newspaper sought from school district under the Freedom of Information Act (FOIA) were protected by attorney client privilege precluded summary judgment. Evening Post Pub. Co. v. Berkeley County School Dist. (S.C. 2011) 392 S.C. 76, 708 S.E.2d 745. Judgment 181(15.1)

County council member could not independently review county’s attorney‑client privileged documents; privilege belonged to county as the client, and council, as a whole, was authorized to release that information and had to waive privilege before individual council member could review privileged documents. Wilson v. Preston (S.C. 2008) 378 S.C. 348, 662 S.E.2d 580. Privileged Communications And Confidentiality 126

Writ of mandamus could not issue to compel administrator to disclose to member of county council the legal bill narratives concerning legal work performed for county by law firm; narratives were subject to attorney‑client privilege, and county, through its board as a whole, had not authorized release of privileged information. Wilson v. Preston (S.C. 2008) 378 S.C. 348, 662 S.E.2d 580. Mandamus 82; Privileged Communications And Confidentiality 146

13. Commercial use of public information

State’s Freedom of information Act (FOIA) grants the public an immutable right to access public records; however, this right of access is viewed differently where commercial use of public information is concerned. Seago v. Horry County (S.C. 2008) 378 S.C. 414, 663 S.E.2d 38, 88 U.S.P.Q.2d 1520. Records 50; Records 52

14. Information of a personal nature

Disclosure of home addresses, personal telephone numbers, and personal e‑mail addresses of city mayor applicants would have constituted an unwarranted invasion of an individual’s privacy, and thus records were exempt from disclosure under the privacy exemption of the state Freedom of Information Act (FOIA), even though information may have been publicly available; public could have determined city in which applicants lived through redacted materials that city provided, and there was no evidence that disclosure would have furthered FOIA’s purpose of protecting the public from secret government activity. Glassmeyer v. City of Columbia (S.C.App. 2015) 414 S.C. 213, 777 S.E.2d 835, rehearing denied. Records 58

**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.

HISTORY: 2002 Act No. 339, Section 30.

CROSS REFERENCES

Access to restricted information, Department of Health and Environmental Control, see S.C. Code of Regulations R. 61‑117.

**SECTION 30‑4‑50.** Certain matters declared public information; use of information for commercial solicitation prohibited.

(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.

HISTORY: 1978 Act No. 593, Section 6; 1982 Act No. 370, Section 1; 1992 Act No. 269, Section 1; 1993 Act No. 44, Section 1; 1998 Act No. 423, Section 7; 2017 Act No. 67 (H.3352), Section 3, eff May 19, 2017.

Effect of Amendment

2017 Act No. 67, Section 3, inserted (A)(9), providing for the inclusion of law enforcement vehicle‑mounted videos and audio recordings of certain incidents involving law enforcement officers as a category of information made public, providing procedures through which enforcement may seek exemption of disclosure of the recordings, and providing requirements for related court orders, and redesignated (A)(9) as (A)(10).

CROSS REFERENCES

Documentation regarding accounts funded by forfeited monies and by proceeds of sale of forfeited items, as available to public under this Act, see Section 44‑53‑530.

Information available to department pursuant to this section must be made available to county coroner or medical examiner and social services department, to investigate child fatality, see Section 63‑11‑1940.

Library References

Records 54.

Westlaw Topic No. 326.

C.J.S. Records Sections 99 to 101, 103 to 104.

Attorney General’s Opinions

Discussion of the release of “dual arrest” incident reports under the Freedom of Information Act where one arrestee has had the records pertaining to his or her charge expunged but the other has not. S.C. Op.Atty.Gen. (Oct. 24, 2013) 2013 WL 5955672.

Any minutes taken with regard to the South Carolina State University Board of Trustees’s actions must be preserved and must accurately reflect the Board’s actions. S.C. Op.Atty.Gen. (Sept. 8, 2010) 2010 WL 3896165.

Copies of arrest warrants and incident reports maintained at the Spartanburg County Detention Center must be made available for walk‑in inspection by the media; any necessary redactions should be accomplished by the arresting law enforcement agency or any law enforcement official with supervisory authority over a particular case prior to transferring the arrest warrants and incident reports to the Detention Center. S.C. Op.Atty.Gen. (July 19, 2010) 2010 WL 3048335.

Freedom of Information Act makes no distinction between members of public, candidates for elected public office, members of legislature, or other categories of requestors as to who may be able to inspect or copy records of public body. 1993 Op. Atty Gen No. 93‑63.

Public body may disclose names, sex, race, title, and dates of employment of all officers and employees of public body subject to any applicable restriction or limitation under Freedom of Information Act. 1993 Op. Atty Gen No. 93‑63.

Except for commercial solicitation, the Freedom of Information Act does not limit how a requestor may use public information obtained pursuant to the Act. Consideration should be given to ethic and election laws if information obtained under the Act should be used in a political campaign. 1993 Op. Atty Gen No. 93‑63.

The accessing of home addresses and home telephone numbers of officers and employees of a public body for use by a non‑profit professional organization for membership recruitment and similar activities does not, on its face, appear to fall within the definition of “commercial solicitation.” Of course, the public body to whom such a request is presented would ultimately make the determination as to whether a particular activity would constitute “commercial solicitation” or to release any records under the recent amendments to the Freedom of Information Act. 1992 Op. Atty Gen No. 92‑20.

Supreme Court decision concludes that each state may enact legislation authorizing disclosure of “rap sheets” to public; SLED’s regulation as to particular data to be disseminated is consistent with Court’s ruling and present South Carolina law; Supreme Court has concluded that “rap sheets” may continue to be treated as in the past by SLED, in accordance with SLED’s regulation; General Assembly could, consistent with Supreme Court ruling, specifically authorize by legislation disclosure of “rap sheets” to public. 1990 Op. Atty Gen No. 90‑15.

United States Supreme Court in Reporters Committee case construed federal law relative to criminal history records maintained by Federal Bureau of Investigation. 1990 Op. Atty Gen No. 90‑15.

Documents at original sources, such as arrest warrants, would not be affected by Supreme Court’s ruling and would be available to public. 1990 Op. Atty Gen No. 90‑15.

Decision to disclose particular record or document in given instance remains with custodian of document or record; such view constitutes a discussion of the ruling by the United States Supreme Court in Reporters Committee case and is not intended to usurp authority of custodian to determine whether disclosure is appropriate in particular instance. 1990 Op. Atty Gen No. 90‑15.

Information such as where a state employee was housed while traveling on state business would be information from a voucher and thus subject to disclosure unless exempt for a reason defined under Section 30‑4‑40. Such a determination must be made on a case‑by‑case basis. 1987 Op. Atty Gen, No. 87‑69, p 171.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

Under South Carolina’s Freedom of Information Act, final order or opinion issued in disciplinary proceeding by State licensing board or agency is public information. 1984 Op. Atty Gen, No. 84‑61, p. 150.

Incident reports used by campus police to report activities occurring within Department of Mental Health which may have criminal implications and which contain patient identities are public information, but to extent that it contains confidential information, such information is exempt from disclosure under FOIA. 1984 Op. Atty Gen, No. 84‑85, p. 205.

A grievance file of the Board of Commissioners on Grievances and Discipline is not public information unless the proceeding has been made public at the request of the respondent attorney or the investigation is predicated upon a conviction of the attorney for a crime or upon public discipline imposed upon the attorney in another jurisdiction. 1981 Op. Atty Gen, No. 81‑60, p 86.

The Freedom of Information Act would not require the disclosure of: (1) personnel information obtained in a preliminary audit data gathering; (2) a preliminary audit report presented as an administrative briefing; (3) informal working documents collected in preparation for conducting an audit and preparing a final audit report. 1976‑77 Op. Atty Gen, No. 77‑133, p 111.

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Section 37‑6‑117, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the South Carolina Freedom of Information Act. 1976‑77 Op. Atty Gen, No. 77‑132, p 111.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No 77‑243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

NOTES OF DECISIONS

In general 1

1. In general

An action for invasion of privacy arising from a publication’s reporting of a prison rape which included the victim’s name, the controlling law in determining whether the information had been obtained lawfully was not the rape shield law, Section 16‑3‑730, but the South Carolina Freedom of Information Act, Sections 30‑40‑10. Doe v. Berkeley Publishers (S.C.App. 1996) 322 S.C. 307, 471 S.E.2d 731, rehearing denied, certiorari granted, reversed 329 S.C. 412, 496 S.E.2d 636, certiorari denied 119 S.Ct. 406, 525 U.S. 963, 142 L.Ed.2d 330.

Findings of fact and conclusions of law in the final order of the state board of medical examiners, which suspended physician for misconduct, was public information and publication of such findings would not be enjoined. Ewing v. State Bd. of Medical Examiners of South Carolina (S.C. 1986) 290 S.C. 89, 348 S.E.2d 361.

**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.

HISTORY: 2003 Act No. 86, Section 3.

Library References

Records 54.

Westlaw Topic No. 326.

C.J.S. Records Sections 99 to 101, 103 to 104.

**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.

HISTORY: 1978 Act No. 593, Section 7.

CROSS REFERENCES

Applicability to meetings of Child Fatality Advisory Committee and Department of Child Fatalities, see Section 63‑11‑1980.

Library References

Records 54.

Westlaw Topic No. 326.

C.J.S. Records Sections 99 to 101, 103 to 104.

Ethics Commission Opinions

Staff briefings of the Public Service Commission do not violate the open meeting rules of the Freedom of Information Act or the adjudicative responsibilities of the Code of Judicial Conduct. Op. S.C. St. Ethics Comm., SEC AO2015‑001, Sept. 17, 2014.

Attorney General’s Opinions

A court would likely find that a walk through of the Old Simpsonville School Building / Arts Center would classify as a meeting subject to the requirements of the Freedom of Information Act. 2014 S.C. Op.Atty.Gen. (February 25, 2015) 2015 WL 1093149.

Discussion of method of voting for replacements on boards and commissions, where there is a voice vote by county council to designate a number for a vote instead of a candidate’s name. S.C. Op.Atty.Gen. (October 12, 2012) 2012 WL 5266016.

The Real Estate Commission is a public body subject to the requirements of the Freedom of Information Act; when the Real Estate Commission is operating as an appellate or quasi‑judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or public session. 1994 Op. Atty Gen, No. 94‑22, p. 54.

Practice of using telephone poll to handle matters over which public body has authority would most probably not comply with Freedom of Information Act. Rather, meeting of body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation, so body may act collectively rather than its members acting individually and independently. 1992 Op. Atty Gen 92‑02.

Attorney General believes that notice requirement of Freedom of Information Act should be followed by public body which will re‑convene from “recess” or “adjourned” meeting wherever such re‑convened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. 1991 Op. Atty Gen No. 91‑42, p 107.

School board would be required to interview candidates for position of superintendent in open or public meeting unless board voted to do so in executive session. 1991 Op. Atty Gen, No. 91‑14 p 52.

While statute does not expressly address question and while courts have not yet faced issue, Freedom of Information Act seemingly would be applicable to search committee of University of South Carolina, which committee is searching for or interviewing candidates to serve as head basketball coach of university. 1991 Op. Atty Gen No. 91‑42, p 107.

A school improvement council would be considered to be a “public body” for purposes of the Freedom of Information Act and as such, would be subject to the requirements of the Act. 1988 Op. Atty Gen, No. 88‑14, p 50.

An advisory committee whose assigned task is information‑gathering or advisory functions should not meet in executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. 1988 Op. Atty Gen, No. 88‑31, p 99.

No individual may be elected commissioner of a highway district unless he receives a favorable vote from a majority of members of the legislative delegations which comprise the district. Such delegations may meet in executive session to discuss the appointment of a person to a public body, though such a meeting in executive session is not required. 1986 Op. Atty Gen, No. 86‑50, p 147.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

In absence of truly exigent circumstances, FOIA requires public body to give notice, in manner prescribed, of time, place, date and agenda of its meetings. Notice is to be given as far in advance of meeting as is practicable, but no less than 24 hours before meeting. 1984 Op. Atty Gen, No. 84‑20, p. 56.

Elections of Chief Commissioner, Secretary‑Treasurer, Chairman and Vice‑Chairman must be ratified in public session before their elections are effective. Because Chief Highway Commissioner is appointed officer of Commission, his selection could be made in executive session. Where member of public body asks that vote be recorded, secret ballot may not be taken. 1984 Op. Atty Gen, No. 84‑46, p. 109.

Matters to be discussed in executive sessions of the Senate are exclusively within the judgment of the Senate. The Freedom of Information Act does not preclude executive sessions of the Senate to discuss reapportionment issues. 1980 Op. Atty Gen, No. 80‑14, p 37.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

NOTES OF DECISIONS

In general 1

1. In general

Town council workshop held 45 miles outside of town did not violate open meeting provision of Freedom of Information Act (FOIA); town presented sufficient evidence that its interest in council members’ increased attention and focus outweighed small cost and delay to public in attending workshop, and town was not required to prove it was indispensable, unavoidable, or essential to conduct its workshop outside of municipal limits. Wiedemann v. Town of Hilton Head Island (S.C.App. 2001) 344 S.C. 233, 542 S.E.2d 752, rehearing denied, certiorari denied. Municipal Corporations 92

Fact that citizen was required to sit in aisle at the back of the room at workshop given by municipality was insufficient to show that meeting was “closed” within meaning of Freedom of Information Act (FOIA). Wiedemann v. Town of Hilton Head Island (S.C. 1998) 330 S.C. 532, 500 S.E.2d 783. Municipal Corporations 92

Municipality did not violate open meetings provision of Freedom of Information Act (FOIA) by conducting public meeting at private club in gated residential community, where public was given notice and welcome to attend meeting. Wiedemann v. Town of Hilton Head Island (S.C. 1998) 330 S.C. 532, 500 S.E.2d 783. Municipal Corporations 92

Freedom of Information Act (FOIA) does not require that meetings of public body be conducted in public building. Wiedemann v. Town of Hilton Head Island (S.C. 1998) 330 S.C. 532, 500 S.E.2d 783. Administrative Law And Procedure 124

Balancing test is appropriate to determine whether municipal meeting held outside of municipal limits complies with minimum cost or delay requirements of Freedom of Information Act (FOIA). Wiedemann v. Town of Hilton Head Island (S.C. 1998) 330 S.C. 532, 500 S.E.2d 783. Municipal Corporations 92

Town did not violate open meeting requirement of Freedom of Information Act (FOIA) by holding town council workshop in private, residential community located 45 miles from town, where citizen and media reporters had attended workshop, there was no allegation that any member of public had been prevented from attending workshop, and town had made arrangements to admit any interested citizens. Morgan v. JPS Automotives (S.C. 1997) 326 S.C. 261, 486 S.E.2d 263.

Open, public meeting of municipal council does not violate open meeting requirement of Freedom of Information Act (FOIA) merely because it is held outside municipal limits; rather, to determine whether such meeting violates FOIA, court is to apply balancing test which balances interest of governmental body in holding out‑of‑town meeting against cost or delay to public. Morgan v. JPS Automotives (S.C. 1997) 326 S.C. 261, 486 S.E.2d 263.

Newspaper was improperly denied access to jail log book and to meetings and minutes of meetings of local building commission. Florence Morning News v. Building Commission of City and County of Florence (S.C. 1975) 265 S.C. 389, 218 S.E.2d 881.

**SECTION 30‑4‑65.** Cabinet meetings 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.

HISTORY: 2003 Act No. 86, Section 6.

Library References

Administrative Law and Procedure 124.

States 41.

Westlaw Topic Nos. 15A, 360.

C.J.S. Public Administrative Law and Procedure Sections 32 to 35.

C.J.S. States Sections 171 to 174, 240 to 242.

**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:

(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.

(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.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

(5) Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.

(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).

(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.

(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.

(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.

(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).

HISTORY: 1978 Act No. 593, Section 8; 1987 Act No. 118, Section 6; 1998 Act No. 371, Section 7B; 1998 Act No. 423, Section 8; 1999 Act No. 122, Section 4; 2005 Act No. 153, Pt IV, Section 5.

CROSS REFERENCES

Applicability to meetings of Child Fatality Advisory Committee and Department of Child Fatalities, see Section 63‑11‑1980.

Application of this section to hazing incidents, see Section 59‑101‑200.

Library References

Administrative Law and Procedure 124.

Records 54.

Westlaw Topic Nos. 15A, 326.

C.J.S. Public Administrative Law and Procedure Sections 32 to 35.

C.J.S. Records Sections 99 to 101, 103 to 104.

RESEARCH REFERENCES

ALR Library

34 ALR 5th 591 , Attorney‑Client Exception Under State Law Making Proceedings by Public Bodies Open to the Public.

Encyclopedias

S.C. Jur. Labor Relations Section 29, Procedure.

Attorney General’s Opinions

Discussion of whether the Beaufort County Board of Education has the authority to discipline one of its own members for policy or conduct violations in executive session. S.C. Op.Atty.Gen. (February 11, 2016) 2016 WL 963697.

A court will likely determine that the FOA would not apply to socializing where no business mailers are discussed or acted upon, as determined on a case‑by‑case basis. S.C. Op.Atty.Gen. (August 5, 2014) 2014 WL 3965780.

Section 30‑4‑70(a)(l) does not require a School Board to grant a Superintendent’s request that his or her evaluation be conducted in open session, nevertheless, the Board could, on its own accord, decide to perform the Superintendent’s evaluation in open session. S.C. Op.Atty.Gen. (Oct. 28, 2013) 2013 WL 6337706.

A committee appointed by a mayor may not meet in executive session for the purpose of discussing potential contractual arrangements between the Town Council and the Reunion Association. S.C. Op.Atty.Gen. (April 30, 2013) 2013 WL 1931657.

State technical colleges may only take deductions from employees’ wages that are specifically mentioned in statute. S.C. Op.Atty.Gen. (Jan. 18, 2011) 2011 WL 380161.

A current county councilman may participate in an executive session with the Rural Fire Board and offer comments not consistent with the remaining members of the County Council without destroying the closed status of the meeting. S.C. Op.Atty.Gen. (May 25, 2010) 2010 WL 2320806.

It would be a violation of Section 30‑4‑70 if several members of the Rural Fire Board had already met to discuss issues via telephone or possibly email. S.C. Op.Atty.Gen. (May 25, 2010) 2010 WL 2320806.

It would be a violation of Section 30‑4‑70 for members of the board to be told that executive session will not end unless all members agree to support the motion. S.C. Op.Atty.Gen. (May 25, 2010) 2010 WL 2320806.

Section 30‑4‑70 does not generally permit a board to enter into executive session to discuss a contract between two government bodies to which they are not a party. S.C. Op.Atty.Gen. (May 25, 2010) 2010 WL 2320806.

Taking a straw poll during executive session would violate the Section 30‑4‑70, especially if members were held to the straw poll taken once executive session was over. S.C. Op.Atty.Gen. (May 25, 2010) 2010 WL 2320806.

The Real Estate Commission is a public body subject to the requirements of the Freedom of Information Act; when the Real Estate Commission is operating as an appellate or quasi‑judicial body, an open meeting should be held, with open deliberations, and voting conducted in open or public session. 1994 Op. Atty Gen, No. 94‑22, p. 54.

Telephone bills of public agency are considered public records and subject to disclosure under Freedom of Information Act. Section 30‑4‑40(a)(2) would not present valid reason, absent some specific showing to contrary, to withhold telephone billing records. 1993 Op. Atty Gen No. 93‑17.

Practice of using telephone poll to handle matters over which public body has authority would most probably not comply with Freedom of Information Act. Rather, meeting of body either corporally or by means of electronic equipment such as telephone conference call would be preferable way to handle emergency situation, so body may act collectively rather than its members acting individually and independently. 1992 Op. Atty Gen 92‑02.

Without question, Freedom of Information Act applies to meetings of Legislature and its committees. 1992 Op. Atty Gen 92‑02.

Attorney General believes that notice requirement of Freedom of Information Act should be followed by public body which will re‑convene from “recess” or “adjourned” meeting wherever such re‑convened meeting will be held, anticipated to be held in executive sessions, or otherwise. Even though public may not have legal right to be present at every part of every meeting, nevertheless public generally has right to know where meeting is and when it will be. 1991 Op. Atty Gen No. 91‑42, p 107.

School board would be required to interview candidates for position of superintendent in open or public meeting unless board voted to do so in executive session. 1991 Op. Atty Gen, No. 91‑14 p 52.

While statute does not expressly address question and while courts have not yet faced issue, Freedom of Information Act seemingly would be applicable to search committee of University of South Carolina, which committee is searching for or interviewing candidates to serve as head basketball coach of university. 1991 Op. Atty Gen No 91‑42, p 107.

Decision to disclose particular record or document in given instance remains with custodian of document or record; such view constitutes a discussion of the ruling by the United States Supreme Court in Reporters Committee case and is not intended to usurp authority of custodian to determine whether disclosure is appropriate in particular instance. 1990 Op. Atty Gen No. 90‑15.

Documents at original sources, such as arrest warrants, would not be affected by Supreme Court’s ruling and would be available to public. 1990 Op. Atty Gen No. 90‑15.

Supreme Court decision concludes that each state may enact legislation authorizing disclosure of “rap sheets” to public; SLED’s regulation as to particular data to be disseminated is consistent with Court’s ruling and present South Carolina law; Supreme Court has concluded that “rap sheets” may continue to be treated as in the past by SLED, in accordance with SLED’s regulation; General Assembly could, consistent with Supreme Court ruling, specifically authorize by legislation disclosure of “rap sheets” to public. 1990 Op. Atty Gen No. 90‑15.

United States Supreme Court in Reporters Committee case construed federal law relative to criminal history records maintained by Federal Bureau of Investigation. 1990 Op. Atty Gen No. 90‑15.

A public body is precluded from taking formal action or a vote except in public session. Because the distinction between purely procedural matters and “formal action” is often not clear, a public rather than secret vote should be taken if any doubt exists, in keeping with the spirit and purpose of the Freedom of Information Act. Ad hoc committees or task forces appointed by the Mayor and City Council for information‑gathering or advisory functions would be subject to the requirements of the Freedom of Information Act. 1988 Op. Atty Gen, No. 88‑5, p 28.

An advisory committee whose assigned task is information‑gathering or advisory functions should not meet in executive session to discuss proposed contractual arrangements unless they are directly involved in the actual negotiation of a contract. 1988 Op. Atty Gen, No. 88‑31, p 99.

An executive session is not appropriate for the discussion of issues causing conflict between a mayor and a city manager inasmuch as the matters to be discussed do not relate to those specified in section 30‑4‑70(a)(1). The Freedom of Information Act mandates that the specific purpose of an executive session must be announced and an announcement that “personnel matters” will be discussed would not be sufficient under the Act. 1988 Op. Atty Gen, No. 88‑9, p 39.

No individual may be elected commissioner of a highway district unless he receives a favorable vote from a majority of members of the legislative delegations which comprise the district. Such delegations may meet in executive session to discuss the appointment of a person to a public body, though such a meeting in executive session is not required. 1986 Op. Atty Gen, No. 86‑50, p 147.

Section 30‑4‑70 governs the holding of executive sessions by a public body, including city councils, and only the purpose announced is a proper subject for discussion in an executive session by a public body. The better practice, and one more in keeping with the Freedom of Information Act, is to ratify in public, action taken in executive session immediately upon return to public session. The Act itself does not expressly prohibit ratification at a later public meeting. However, such actions taken in executive session would be ineffectual until public ratification occurs. Minutes and recorded votes of executive sessions are not matters of public record, and whether a member of a public body can change his vote in a public session from that he cast in executive session would depend largely on how the public body carried out the ratification process. Finally, where a public body has adopted rules of procedure prohibiting a member from changing a prior vote or ratification is effected as in Multimedia , a vote may not be changed and the public body would be bound. 1986 Op. Atty Gen, No. 86‑54, p 156.

Affirmative vote of six members would be necessary to constitute three‑fourths vote of seven‑member board to convene to receive administration briefing. 1985 Op. Atty Gen, No. 85‑3, p 27.

In absence of specified number of members necessary to convene in executive session, simply majority vote consisting of four members would be necessary for seven‑member board to convene in executive session. 1985 Op. Atty Gen, No. 85‑3, p 27.

Ratification of agreement or settlement reached either by individual members of board or one of its committees or other officials or officers must be affirmed by majority of board in public session in order for such action to be effective under Freedom of Information Act. 1985 Op. Atty Gen, No. 85‑132, p 360.

Severance or retraining pay is constitutionally prohibited as being made after services have been rendered or contract fulfilled; where vote is taken in executive session to award severance pay, such action is not effective or valid until ratified in public session. 1985 Op. Atty Gen, No. 85‑116, p 322.

Where public body votes in executive session on questions such as whether to employ individual and decides not to take such action, that decision should be ratified in public session prior to becoming effective; better practice, and one more in keeping with spirit and intent of Freedom of Information Act, is to ratify action taken in executive session immediately upon return to public session. 1985 Op. Atty Gen, No. 85‑44, p 137.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

Elections of Chief Commissioner, Secretary‑Treasurer, Chairman and Vice‑Chairman must be ratified in public session before their elections are effective. Because Chief Highway Commissioner is appointed officer of Commission, his selection could be made in executive session. Where member of public body asks that vote be recorded, secret ballot may not be taken. 1984 Op. Atty Gen, No. 84‑46, p. 109.

Public body (legislative delegation) is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op. Atty Gen, No. 84‑111, p. 256.

Tenure Committee of state college constitutes public body under Freedom of Information Act. Tenure Committee, in voting on particular individuals being granted ordinary tenure while in executive session has to consult college rules regulations and procedures to determine voting procedures. Committee must ratify in public session any formal action taken by body in executive session. Formal actions include decisions of tenure and denials of tenure. 1984 Op. Atty Gen, No. 84‑64, p. 159.

Town Council must vote in public on the question of whether to enter into Executive Sessions. 1983 Op. Atty Gen, No. 83‑49, p. 71.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

NOTES OF DECISIONS

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1. In general

Town violated Freedom of Information Act (FOIA) by taking unnoticed action at special meetings following executive sessions; although town had issued agendas for a special meeting listing an executive session, the town was not free to take any action on any item that was properly discussed during executive session, and the agendas did not necessarily imply action following the discussion. Brock v. Town of Mount Pleasant (S.C. 2016) 415 S.C. 625, 785 S.E.2d 198. Towns 26

Although unnoticed items may be added to an executive session discussion at the time of a meeting, after the executive session concludes and the public body reconvenes in open session, any action taken or decision made must be properly noticed, and, in the case of special meetings, such items may not exceed the scope of the purpose for which the meeting was called. Brock v. Town of Mount Pleasant (S.C. 2016) 415 S.C. 625, 785 S.E.2d 198. Administrative Law and Procedure 124

Exemptions from disclosure contained in state Freedom of Information Act (FOIA) do not create duty of nondisclosure; rather exemptions, at most, simply allow public agency the discretion to withhold exempted materials from public disclosure. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 54

County legislative delegation did not violate Freedom of Information Act by recommending appointment to governor to fill vacant school board position in properly noticed, open public meeting through process in which sign up sheet was circulated at meeting; although formal action was to be taken by recorded vote and two members may have prematurely signed sheet, nothing in provision required vote to be by open roll‑call and two members were present at meeting and adhered to their signatures. Fowler v. Beasley (S.C. 1996) 322 S.C. 463, 472 S.E.2d 630. Administrative Law And Procedure 124; Education 87(5); Education 93; Public Employment 182

The “Peeping Tom” statute [Section 16‑17‑470] was inapplicable to the conduct of newspaper reporters who sought to overhear proceedings of city council while in executive session, since the reporters were on public property and not on or about the premises of another. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878. Trespass 11

2. Executive sessions

Freedom of Information Act (FOIA) does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session, since no action may be taken in executive session except to adjourn or return to public session. Brock v. Town of Mount Pleasant (S.C. 2016) 415 S.C. 625, 785 S.E.2d 198. Administrative Law and Procedure 124

Mayor’s and city council’s announcement of an executive session to discuss negotiations incident to a proposed contractual matter did not satisfy Freedom of Information Act’s (FOIA) requirement that specific purpose of executive session be announced in open session. Donohue v. City of North Augusta (S.C. 2015) 412 S.C. 526, 773 S.E.2d 140. Municipal Corporations 92

Town council violated the specific purpose provision of the Freedom of Information Act (FOIA) by going into executive session at November 13, 2007 meeting without announcing the specific purpose of the session; the council never announced it would discuss whether or not it could retain its own individual attorneys “for all lawsuits now and in the future” related to town business at the public’s expense, and the actions taken were not consistent with the announced purpose of discussing legal matters or obtaining legal advice. Brock v. Town of Mount Pleasant (S.C.App. 2014) 411 S.C. 106, 767 S.E.2d 203, certiorari granted, affirmed as modified 415 S.C. 625, 785 S.E.2d 198. Municipal Corporations 92

Town council did not violate the Freedom of Information Act’s (FOIA) specific purpose provision by going into executive session without stating the specific purpose for adjourning into executive session at its November 16 and December 5, 2007 council meetings, where the town administrator and town attorney disclosed exactly what was going to be discussed. Brock v. Town of Mount Pleasant (S.C.App. 2014) 411 S.C. 106, 767 S.E.2d 203, certiorari granted, affirmed as modified 415 S.C. 625, 785 S.E.2d 198. Municipal Corporations 92

City council violated the Freedom of Information Act (FOIA) by going into executive session without announcing the specific purpose of the session, even if everyone at the meeting knew that the purpose was discussion on a bid for a towing contract; the council was required to announce the purpose. Quality Towing, Inc. v. City of Myrtle Beach (S.C. 2001) 345 S.C. 156, 547 S.E.2d 862, rehearing denied. Municipal Corporations 244(2); Public Contracts 188

City council discussions in executive session on whether a towing contract could be awarded to just one wrecker service was not “formal action” and, therefore, did not violate the Freedom of Information Act (FOIA); the city council only received legal advice concerning the term of the contract, the legality of contracting with only one wrecker service, and the legality setting the towing rates in the contract, and the council voted in public. Quality Towing, Inc. v. City of Myrtle Beach (S.C. 2001) 345 S.C. 156, 547 S.E.2d 862, rehearing denied. Municipal Corporations 244(2); Public Contracts 188

Freedom of Information Act (FOIA) provision permitting public body to hold closed meeting to discuss employment, demotion, or discipline of employee does not exempt internal investigation report of law enforcement agency from disclosure; report is public record, and question of its exemption must be resolved by reference to provision concerning matters exempt from disclosure. City of Columbia v. American Civil Liberties Union of South Carolina, Inc. (S.C. 1996) 323 S.C. 384, 475 S.E.2d 747. Records 60

The Freedom of Information Act, Sections 30‑4‑10 et seq., dictates the procedures by which public bodies must conduct their meetings. Piedmont Public Service Dist. v. Cowart (S.C.App. 1995) 319 S.C. 124, 459 S.E.2d 876, rehearing denied, certiorari granted, affirmed 324 S.C. 239, 478 S.E.2d 836.

A county business license tax ordinance amendment was properly held to be invalid pursuant to what is now Section 30‑4‑70(b), which precludes taking votes or formal action in an executive closed meeting, where (1) the consensus regarding the amendment was reached at a closed meeting, (2) no motion to amend was made at the subsequent public meeting, and (3) the amended version was read as a “third reading” and voted upon. Business License Opposition Committee v. Sumter County (S.C. 1992) 311 S.C. 24, 426 S.E.2d 745.

The “purpose” of the executive session was sufficiently announced by the announcement by the mayor, after city council had voted to go into executive section, that while in executive session city council would discuss the employment of a person for the development of a training session for the council, hear a legal presentation by attorneys for the city, and receive a report from consultants on a proposed water treatment plant. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878.

Newspapers’ complaint because the city council took up matters not on the agenda while in executive session was without merit, since the act does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session, and, moreover, no prejudice resulted to the newspapers as a result of their not having an agenda for the meeting in advance of the meeting taking place. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878.

3. Employment matters

A Public Service District terminated an employee in violation of the Freedom of Information Act, Sections 30‑4‑10 et seq., where the District’s vote to terminate the employee took place while the District was in executive session. Piedmont Public Service Dist. v. Cowart (S.C.App. 1995) 319 S.C. 124, 459 S.E.2d 876, rehearing denied, certiorari granted, affirmed 324 S.C. 239, 478 S.E.2d 836.

The exemption provisions of the Freedom of Information Act (FOIA), Sections 30‑4‑10 et seq., did not establish a statutory duty of confidentiality for personal information, and thus did not create a cause of action in favor of a county employee for comments made by her superiors to the press regarding her removal; neither did the superiors owe the employee a special duty of confidentiality, since the purpose of the FOIA is to protect the public from secret government activity and neither exemption provision purports to protect individual rights. Bellamy v. Brown (S.C. 1991) 305 S.C. 291, 408 S.E.2d 219.

County board of education properly held closed meeting to interview representative of petitioners seeking dismissal of superintendent of schools, where the petitions, as presented, failed to specify the reasons for the dismissal, and the board’s only practical way to determine what those reasons might be and whether the matters to be considered did not constitute an invasion of the superintendent’s right of personal privacy was to conduct such meeting. Georgetown Communications, Inc. v. Williams (S.C.App. 1986) 290 S.C. 149, 348 S.E.2d 396.

4. Legal advice

Holding of a closed session meeting of city council to hear the presentation by attorneys concerning a waste water treatment plant clearly fell within exemption from the open meeting requirement for the receipt of legal advice provided by Section 30‑4‑70(a)(2), since, even though the city was not involved in litigation at the time of the closed meeting, litigation was a grave real possibility. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878. Municipal Corporations 92

Exemption from the open meeting requirement in Section 30‑4‑70(a)(2) does not require that a public body actually be engaged in litigation, only that legal advice be rendered. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878. Administrative Law And Procedure 124

Presentation by consultants who were evaluating the three water supply alternatives under consideration by city council fell within the exemption from the open meeting requirement found in Section 30‑4‑70(a)(2). Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878.

5. Equitable relief

Developer failed to state a cause of action against county council members for violation of Freedom of Information Act provision that prohibited use of a chance meeting, social meeting, or electronic communication in circumvention of the spirit of FOIA requirements to act on a matter over with a public body has supervision, control, or advisory power, where developer brought action against council members in their individual capacities, rather than in their official capacities as council members. Cricket Cove Ventures, LLC v. Gilland (S.C.App. 2010) 390 S.C. 312, 701 S.E.2d 39, rehearing denied. Counties 59; Public Employment 915

Upon a finding of a violation of the Freedom of Information Act, Sections 30‑4‑10 et seq., the trial court may order equitable relief as it considers appropriate, and a violation of the statute must be considered to be an irreparable injury for which no adequate remedy at law exists; consequently, the trial court did not abuse its discretion when it ordered the invalidation of a vote by a Public Service District to terminate an employee where the vote was in violation of the Act. Piedmont Public Service Dist. v. Cowart (S.C.App. 1995) 319 S.C. 124, 459 S.E.2d 876, rehearing denied, certiorari granted, affirmed 324 S.C. 239, 478 S.E.2d 836.

6. Review

In declaratory judgment action brought by former chairman of town council’s planning commission, in which he alleged violations of the Freedom of Information Act (FOIA) and the Public Records Retention Act, former chairman failed to preserve for appeal his arguments regarding trial court’s rulings on applicability of two cases supporting ratification, on FOIA exemptions, and on alleged repeated FOIA violations, where, while former chairman’s motion to amend or alter the judgment and reply to town’s return outlined those issues, former chairman chose not to make those arguments during the motion hearing. Brock v. Town of Mount Pleasant (S.C.App. 2014) 411 S.C. 106, 767 S.E.2d 203, certiorari granted, affirmed as modified 415 S.C. 625, 785 S.E.2d 198. Records 50

**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.

(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.

(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.

(D) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

HISTORY: 1978 Act No. 593, Section 9; 1987 Act No. 118, Section 7; 2015 Act No. 70 (S.11), Section 1, eff June 8, 2015.

Effect of Amendment

2015 Act No. 70, Section 1, changed the paragraph designators to upper case; in (A), substituted “An agenda for regularly scheduled or special meetings” for “Agenda, if any, for regularly scheduled meetings” in the third sentence, added references to websites, and added the text beginning with “Once an agenda for a regular ...”; and made other nonsubstantive changes.

Library References

Administrative Law and Procedure 124.

Westlaw Topic No. 15A.

C.J.S. Public Administrative Law and Procedure Sections 32 to 35.

Ethics Commission Opinions

Staff briefings of the Public Service Commission do not violate the open meeting rules of the Freedom of Information Act or the adjudicative responsibilities of the Code of Judicial Conduct. Op. S.C. St. Ethics Comm., SEC AO2015‑001, Sept. 17, 2014.

Attorney General’s Opinions

Failure to provide notice on a website of two upcoming meetings regarding a vote on a referendum, when the Town understood the website to have been removed, would be a technical error and would not affect the result of the election on the referendum. S.C. Op.Atty.Gen. (May 17, 2016) 2016 WL 3097466.

Court would probably find that ad hoc citizens committee appointed by Town Council to be public bodies subject to Freedom of Information Act. Working drafts of proposed ordinances should not be disclosed unless or until such drafts are made available to council or otherwise distributed. Court could conclude that working drafts or final drafts of proposed ordinances ready to be submitted to council for consideration may be considered final claiming decisions and thus subject to disclosure. However, Town Council may vote to exclude such records from public disclosure when Council feels that public will best be served by non‑disclosure. Confidential information reports, prepared by Town manager for distribution to members of Town Council, could be public records subject to disclosure. However, memorandum could contain information exempt from disclosure, which determination would be made on case‑by‑case basis. 1984 Op. Atty Gen, No. 84‑125, p. 281.

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While statute does not expressly address question and while courts have not yet faced issue, Freedom of Information Act seemingly would be applicable to search committee of University of South Carolina, which committee is searching for or interviewing candidates to serve as head basketball coach of university. 1991 Op. Atty Gen No. 91‑42, p 107.

A public body must provide notice of all public meetings, whether scheduled, rescheduled, or called to local news media, persons, or organizations who may request to be notified. Generally, the public should be notified by the posting of a notice at the office or meeting place of the public body. 1989 Op. Atty Gen, No. 89‑111, p 298.

Proper notice for a regularly scheduled meeting should be given by written public notice at the beginning of the calendar year and include the date, time, place, and agenda; called, special, or rescheduled meetings require notice at least 24 hours in advance which is to include the date, time, and place; the Freedom of Information Act does not place responsibility on any entity to ensure that notification is received. 1989 Op. Atty Gen, No. 89‑111, p 298.

In absence of truly exigent circumstances, FOIA requires public body to give notice, in manner prescribed, of time, place, date and agenda of its meetings. Notice is to be given as far in advance of meeting as is practicable, but no less than 24 hours before meeting. 1984 Op. Atty Gen, No. 84‑20, p. 56.

Public body (legislative delegation) is required under FOIA to act collectively in formally convened open meeting and acting upon matters within its authority (budget approval). Once meeting is required, FOIA would probably be deemed applicable, thus requiring meeting to be public, unless specific exemption were applicable. 1984 Op. Atty Gen, No. 84‑111, p. 256.

Public notice as used in Section 4‑9‑110 is the same term as used in 30‑4‑80, and public notice requirements should follow the notice provisions of the Freedom of Information Act. 1983 Op. Atty Gen, No. 83‑64, p. 102.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No 77‑243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a prOp.er disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

Without question, Freedom of Information Act applies to meetings of Legislature and its committees. 1992 Op. Atty Gen 92‑02.

NOTES OF DECISIONS

In general 1

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Freedom of Information Act (FOIA) does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session, since no action may be taken in executive session except to adjourn or return to public session. Brock v. Town of Mount Pleasant (S.C. 2016) 415 S.C. 625, 785 S.E.2d 198. Administrative Law and Procedure 124

Although unnoticed items may be added to an executive session discussion at the time of a meeting, after the executive session concludes and the public body reconvenes in open session, any action taken or decision made must be properly noticed, and, in the case of special meetings, such items may not exceed the scope of the purpose for which the meeting was called. Brock v. Town of Mount Pleasant (S.C. 2016) 415 S.C. 625, 785 S.E.2d 198. Administrative Law and Procedure 124

Public notice provision of the Freedom of Information Act (FOIA) did not require town council to include the exact action it planned to take after an executive session on a published meeting agenda; the FOIA did not mandate an agenda for executive sessions, and to require town council to notify the public of the exact actions it planned to take after an executive session would be inapposite to the provisions allowing for closed sessions. Brock v. Town of Mount Pleasant (S.C.App. 2014) 411 S.C. 106, 767 S.E.2d 203, certiorari granted, affirmed as modified 415 S.C. 625, 785 S.E.2d 198. Municipal Corporations 92

County council’s practice of amending its agenda during a regularly scheduled meeting to take up an additional resolution did not violate the notice requirement of the Freedom of Information Act (FOIA), where the proposed amendment to the agenda and the resolution were both raised and voted upon in public and were recorded in the minutes of the meeting of the council. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Counties 52

Under Freedom of Information Act (FOIA) provision stating that the agenda “if any,” for regularly scheduled meetings must be posted, an agenda is not required for regularly scheduled meetings. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Administrative Law and Procedure 124

Under Freedom of Information Act (FOIA) provision stating that all public bodies must give written public notice of their regular meetings at the beginning of each calendar year, a “regular meeting” is one convened at a stated time and place pursuant to a general order, statute or resolution. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Administrative Law and Procedure 124

Under Freedom of Information Act (FOIA) provision stating that public bodies must post notice for any called, special,or rescheduled meetings no later than twenty‑four hours before the meeting, a “special meeting” is a meeting called for a special purpose and at which nothing can be done beyond the objects specified for the call. Lambries v. Saluda County Council (S.C. 2014) 409 S.C. 1, 760 S.E.2d 785, rehearing denied. Administrative Law and Procedure 124

County council’s practice of amending its agenda during regularly scheduled meetings violated the purpose of the notice requirement of the Freedom of Information Act (FOIA) to promote openness and greater notice to the public, even if regularly scheduled meetings were open to the public; FOIA required narrow construction to guarantee the public reasonable access to the activities of government, and permitting amendments to the agenda during a regularly scheduled meeting was a practice that could have been abused. Lambries v. Saluda County Council (S.C.App. 2012) 398 S.C. 501, 728 S.E.2d 488, rehearing denied, reversed 409 S.C. 1, 760 S.E.2d 785. Counties 52

The convening of a County Board of Education was within the definition of a “meeting” under Section 30‑4‑20(d), thus requiring public notice to be given, where the matters on the agenda included (1) points of agreement and disagreement between the Board and a city planning committee; (2) a summary of research regarding school size; (3) operational costs at a city school as compared to other similar schools; and (4) rezoning and transporting students from the area, since the nature of the items on the agenda, together with the expressed intent to “go over each piece of information” necessarily entailed Board discussion of matters over which it had “supervision, control, jurisdiction or advisory power” involving the school. Braswell v. Roche (S.C. 1989) 299 S.C. 181, 383 S.E.2d 243.

Newspapers’ complaint because the city council took up matters not on the agenda while in executive session was without merit, since the act does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session, and, moreover, no prejudice resulted to the newspapers as a result of their not having an agenda for the meeting in advance of the meeting taking place. Herald Pub. Co., Inc. v. Barnwell (S.C.App. 1986) 291 S.C. 4, 351 S.E.2d 878.

**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.

(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.

(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.

HISTORY: 1978 Act No. 593, Section 10; 2001 Act No. 13, Section 1.

Library References

Administrative Law and Procedure 124, 127.

Records 54.

Westlaw Topic Nos. 15A, 326.

C.J.S. Public Administrative Law and Procedure Sections 32 to 35, 38 to 39.

C.J.S. Records Sections 99 to 101, 103 to 104.

Attorney General’s Opinions

Any person in attendance may record meetings of a public body that are open to the public. S.C. Op.Atty.Gen. (September 12, 2016) 2016 WL 5539648.

Discussion of method of voting for replacements on boards and commissions, where there is a voice vote by county council to designate a number for a vote instead of a candidate’s name. S.C. Op.Atty.Gen. (October 12, 2012) 2012 WL 5266016.

Under the Freedom of Information Act, recording a public meeting of a public body by means of a home video camera would be permitted, assuming that recording is done in a manner nondisruptive to the public meeting. Such recording of public figures would not violate their right of privacy since, by virtue of their public service, they have voluntarily placed themselves before the public and they have relinquished part of their rights of privacy. 1988 Op. Atty Gen, No. 88‑3, p 24.

Tenure Committee of state college constitutes public body under Freedom of Information Act. Tenure Committee, in voting on particular individuals being granted ordinary tenure while in executive session has to consult college rules regulations and procedures to determine voting procedures. Committee must ratify in public session any formal action taken by body in executive session. Formal actions include decisions of tenure and denials of tenure. 1984 Op. Atty Gen, No. 84‑64, p. 159.

Prior Attorney General’s Opinion No. 77‑279 concerning use of secret ballots to elect board officers is not clearly erroneous. 1984 Op. Atty Gen, No. 84‑4, p. 22.

Elections of Chief Commissioner, Secretary‑Treasurer, Chairman and Vice‑Chairman must be ratified in public session before their elections are effective. Because Chief Highway Commissioner is appointed officer of Commission, his selection could be made in executive session. Where member of public body asks that vote be recorded, secret ballot may not be taken. 1984 Op. Atty Gen, No. 84‑46, p. 109.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

Under the decision of the South Carolina Supreme Court in CoOp.er v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session; (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

NOTES OF DECISIONS

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1. In general

Newspaper was improperly denied access to jail log book and to meetings and minutes of meetings of local building commission. Florence Morning News v. Building Commission of City and County of Florence (S.C. 1975) 265 S.C. 389, 218 S.E.2d 881.

**SECTION 30‑4‑100.** Injunctive relief; costs and attorney’s fees.

(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.

(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.

HISTORY: 1978 Act No. 593, Section 11; 1987 Act No. 118, Section 8; 2017 Act No. 67 (H.3352), Section 4, eff May 19, 2017.

Effect of Amendment

2017 Act No. 67, Section 4, amended the section, providing time constraints within which determinative hearings on the requests for relief must be made.

Library References

Records 67, 68.

Westlaw Topic No. 326.

C.J.S. Records Sections 95, 99, 112, 117 to 121, 126 to 131.

RESEARCH REFERENCES

ALR Library

118 ALR 5th 1 , Construction and Application of State Freedom of Information Act Provisions Concerning Award of Attorney’s Fees and Other Litigation Costs.

Encyclopedias

S.C. Jur. Costs Section 43, South Carolina Freedom of Information Act.

Forms

South Carolina Litigation Forms and Analysis Section 24:5 , Order Requiring Production of Records.

South Carolina Litigation Forms and Analysis Section 39:8 , Attorney’s Fees.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

Attorney General’s Opinions

The discloseability of prefiled indictments under the state Freedom of Information Act is to be determined by the clerks of the courts, subject to judicial scrutiny. 1989 Op. Atty Gen, No. 89‑16, p 44.

Under the decision of the South Carolina Supreme Court in Cooper v. Bales, the State of South Carolina and its political subdivisions should release only the employee’s salary, grade and job description upon request under the FOIA. Any further disclosure could come only if the employee authorizes the release or if a court of competent jurisdiction orders such disclosure. 1976‑77 Op. Atty Gen, No. 77‑243, p 180.

The South Carolina Freedom of Information Act does not require that the public be given access to personnel files and employment applications maintained on employees of the South Carolina House of Representatives. 1976‑77 Op. Atty Gen, No. 77‑45, p 45.

(1) The Freedom of Information Act does not require the disclosure of how each member of a school board voted in executive session. (2) The school board may elect officers in a public meeting by secret ballot, but any written record of the vote by name would be public information after the votes are tabulated. 1976‑77 Op. Atty Gen, No. 77‑279, p 214.

Under the provisions of the Freedom of Information Act, records containing charges against residential homebuilders should be made available for public inspection and copying once a proper disposition has been made of the charge by the Residential Homebuilders’ Commission. 1976‑77 Op. Atty Gen, No. 77‑288, p 219.

NOTES OF DECISIONS

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1. In general

A declaratory judgment action under the Freedom of Information Act (FOIA) to determine whether certain information should be disclosed is an action at law. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Declaratory Judgment 253

Citizens and members of county legislative delegation had standing to sue for injunction to prevent appointment of board member to county board of education under Freedom of Information Act (FOIA) provision allowing any citizen to apply to circuit court for injunctive relief. Fowler v. Beasley (S.C. 1996) 322 S.C. 463, 472 S.E.2d 630. Injunction 1505

A cause of action for violation of the Freedom of Information Act, Sections 30‑4‑10 et seq., should not have been dismissed where a majority of the county council had held closed meetings prior to the regularly scheduled public meetings at which a proposed business license tax was given second and third readings; the proper procedure for amending the ordinance was not followed and the plaintiffs were entitled to litigate the nature and effect of the violation, and the appropriate relief to be awarded. Business License Opposition Committee v. Sumter County (S.C. 1991) 304 S.C. 232, 403 S.E.2d 638.

2. Jurisdiction

The intent of the legislature to confer exclusive jurisdiction on the Circuit Court in matters pertaining to enforcement of rights under the Freedom of Information Act is apparent from the nature of the subject matter and the right created. Martin v. Ellisor (S.C. 1975) 264 S.C. 202, 213 S.E.2d 732.

Statute providing County Court concurrent jurisdiction with Circuit Court in equity matters did not provide concurrent jurisdiction to County Court to enforce the Freedom of Information Act by injunction. Martin v. Ellisor (S.C. 1975) 264 S.C. 202, 213 S.E.2d 732. Courts 472.3

Statutory provisions which designate the Circuit Court as the court to which application may be made for enforcement of the Freedom of Information Act, effectively grant exclusive jurisdiction to the Circuit Court in such matters, and a County Court is without jurisdiction to entertain action to allow copying of computer lists of registered voters compiled by state election commission. Martin v. Ellisor (S.C. 1975) 264 S.C. 202, 213 S.E.2d 732.

3. Relief granted

Issuance of injunction against sheriff and sheriff’s department for a violation of the Freedom of Information Act (FOIA), which permanently enjoined the department from asserting exemptions to disclosure that had no legal or factual justification, was proper; department withheld non‑exempt documents that were subject to a legitimate request by newspaper reporter and failed to segregate exempt and non‑exempt materials for disclosure, and order explained the reasons for the injunction and the acts it intended to prescribe. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 67

Testimony from newspaper editor, which described the events that led up to newspaper reporter requesting the disclosure of certain documents under the Freedom of Information Act (FOIA), did not constitute inadmissible hearsay and was admissible during proceeding for an injunction against sheriff’s department due to its failure to turn over requested documents; the testimony was not admitted to establish the truth of the matter asserted, rather, the information explained why newspaper requested the information from department. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 65

Trial court could not properly grant protective order prohibiting requester from disclosing county hospital’s information relating to physicians’ salaries and to purchase price of physician practices, in requester’s action against hospital under state Freedom of Information Act (FOIA), since information obtained pursuant to FOIA could not be protected by restraining order, and protective order was not necessary in that disclosure of that information would not have impeded hospital’s efforts to hire physicians. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 67

Upon a finding of a violation of the Freedom of Information Act, Sections 30‑4‑10 et seq., the trial court may order equitable relief as it considers appropriate, and a violation of the statute must be considered to be an irreparable injury for which no adequate remedy at law exists; consequently, the trial court did not abuse its discretion when it ordered the invalidation of a vote by a Public Service District to terminate an employee where the vote was in violation of the Act. Piedmont Public Service Dist. v. Cowart (S.C.App. 1995) 319 S.C. 124, 459 S.E.2d 876, rehearing denied, certiorari granted, affirmed 324 S.C. 239, 478 S.E.2d 836.

The special master properly enjoined a county council from “any further informal or discussion meetings” which violate the Freedom of Information Act (FOIA), Section 30‑4‑10 et seq., even though the council had agreed to comply with the FOIA and had instituted remedial measures for future compliance, where the council admitted it violated the FOIA, and there was at least one other violation in addition to the 2 at issue; Section 30‑4‑100 specifically provides that where there has been a violation, 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.” Business License Opposition Committee v. Sumter County (S.C. 1992) 311 S.C. 24, 426 S.E.2d 745.

4. Attorney’s fees

Trial court’s failure to enter finding regarding its denial of newspaper reporter’s request for attorney fees was an abuse of discretion and warranted remand for proper consideration, in action for declaratory judgment and injunctive relief against sheriff and sheriff’s department after department failed to disclose non‑exempt information reporter had requested under the Freedom of Information Act (FOIA); FOIA provided for an award of attorney fees to a prevailing part, and there was no evidence that the court considered the factors required to determine whether to award attorney fees. Burton v. York County Sheriff’s Dept. (S.C.App. 2004) 358 S.C. 339, 594 S.E.2d 888, on remand 2004 WL 5653630. Records 68

Petitioner prevailed on significant issues in action under the state Freedom of Information Act (FOIA), and thus he was entitled to attorney fees under FOIA, even though petitioner was not entitled to city mayor applicants’ home addresses, telephone numbers, and e‑mail addresses, where petitioner challenged redaction of other information, which city provided to him since commencement of litigation, and city failed to provide any basis for its redactions when it produced responsive documents. Glassmeyer v. City of Columbia (S.C.App. 2015) 414 S.C. 213, 777 S.E.2d 835, rehearing denied. Records 68

Declarations of mootness and non‑justiciability by Supreme Court in citizen’s prior appeal of summary judgment to non‑profit corporation in citizen’s suit against corporation alleging failure to comply with his Freedom of Information Act (FOIA), based on corporation’s voluntary production of requested documents after citizen filed suit, were law of the case and, thus, limited time period for which citizen, as prevailing party, was entitled to attorney fees to time period up to the time corporation produced the requested documents. Sloan v. Friends of Hunley, Inc. (S.C. 2011) 393 S.C. 152, 711 S.E.2d 895. Records 68

Citizen who filed suit against non‑profit corporation alleging failure to comply with his Freedom of Information Act (FOIA) request was a “prevailing party” for purposes of FOIA’s attorney fee provision, though corporation voluntarily produced requested documents after citizen filed his complaint, thus mooting the case, as corporation, in mooting the case, provided citizen with the very relief he sought to procure through litigation, and, thus, he prevailed in substance, albeit without court intervention, and corporation, by frustrating citizen’s FOIA request to extent that he had to seek relief in court and incur litigation costs, should not be able to preclude prevailing party status to citizen by producing documents after litigation was filed. Sloan v. Friends of Hunley, Inc. (S.C. 2011) 393 S.C. 152, 711 S.E.2d 895. Records 68

No good faith exception exists for an award of attorney fees under Freedom of Information Act (FOIA). New York Times Co. v. Spartanburg County School Dist. No. 7 (S.C. 2007) 374 S.C. 307, 649 S.E.2d 28. Records 68

Remand to trial court was warranted on issue of whether requester was entitled to attorney’s fees in action under state Freedom of Information Act (FOIA) that sought disclosure of county hospital’s information relating to physicians’ salaries and to purchase price of physician practices, since trial court’s finding that information constituted trade secrets was erroneous, and requester was actually awarded all of information requested, not simply a portion of requested information as found by trial court. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 63

Only prerequisite to award of attorney’s fees and costs under state Freedom of Information Act (FOIA) is that party seeking relief must prevail, in whole or in part. Campbell v. Marion County Hosp. Dist. (S.C.App. 2003) 354 S.C. 274, 580 S.E.2d 163, rehearing denied. Records 68

Under Section 30‑4‑100, the only prerequisite to an award of attorney fees and costs is that the party seeking relief must prevail, in whole or in part. Thus, where the plaintiffs prevailed on their request for declaratory relief, it was within the trial judge’s discretion to award attorney fees and costs to the plaintiffs. Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist. (S.C. 1989) 299 S.C. 155, 382 S.E.2d 923.

In a consolidated action brought under the Freedom of Information Act for an award of attorney’s fees under Section 30‑4‑100, the trial judge did not abuse his discretion in awarding fees to encourage agencies to comply with FOIA requests. Society of Professional Journalists v. Sexton (S.C. 1984) 283 S.C. 563, 324 S.E.2d 313.

5. Standing

Citizen had statutory standing to challenge a severance agreement between county and its former county administrator as violative of the state Freedom of Information Act (FOIA); the legislature had specifically conferred standing upon any citizen to bring a FOIA claim against a public body for declaratory or injunctive relief, or both, and citizen pled that he was a citizen of the State and that FOIA had been violated. Freemantle v. Preston (S.C. 2012) 398 S.C. 186, 728 S.E.2d 40. Declaratory Judgment 300; Records 52

Plaintiff who requested documents under the Freedom of Information Act (FOIA) from nonprofit corporation that was formed to recover and conserve Confederate submarine, had standing to bring action seeking declaratory judgment and injunctive relief to enforce FOIA when corporation failed to comply with FOIA request; FOIA specifically provided that any citizen of the state could apply for declaratory and injunctive relief, and FOIA plaintiff was not required to have a personal stake in the outcome. Sloan v. Friends of Hunley, Inc. (S.C. 2006) 369 S.C. 20, 630 S.E.2d 474. Declaratory Judgment 300

**SECTION 30‑4‑110.** Hearings regarding disclosure; appropriate relief; civil fine for violation.

(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.

(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.

(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.

(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.

HISTORY: 1978 Act No. 593, Section 12; 2017 Act No. 67 (H.3352), Section 5, eff May 19, 2017.

Effect of Amendment

2017 Act No. 67, Section 5, rewrote the section, removing criminal penalties, and providing rights and remedies of public bodies from whom requests are made and persons with specific interests in exempt information for which disclosure is sought.

Library References

Records 68.

Westlaw Topic No. 326.

C.J.S. Records Sections 95, 99, 112, 119 to 121, 128 to 131.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 25, Matters of Pre‑Trial Proceedings.

S.C. Jur. Colleges and Universities Section 28, Operation.

**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.

HISTORY: 1999 Act No. 100, Part II, Section 53.

Library References

Records 58.

Westlaw Topic No. 326.

C.J.S. Records Sections 99 to 100, 104 to 105, 107.

Attorney General’s Opinions

The Department of Motor Vehicles may continue to share personal information, including photographs, with the Courts and the Courts may redistribute this information, as long as they are doing so for permissible purposes. S.C. Op.Atty.Gen. (April 6, 2011) 2011 WL 1740736.

**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.

HISTORY: 1999 Act No. 33, Section 1.

Library References

Records 58.

Westlaw Topic No. 326.

C.J.S. Records Sections 99 to 100, 104 to 105, 107.

RESEARCH REFERENCES

Encyclopedias

132 Am. Jur. Proof of Facts 3d 1, Proof Supporting Disclosure Under State Freedom of Information Acts.

Forms

South Carolina Litigation Forms and Analysis Section 24:2 , Request for Records Letter.

South Carolina Litigation Forms and Analysis Section 24:3 , Freedom of Information Act Request Form‑South Carolina Department of Public Safety.

Attorney General’s Opinions

The Department of Motor Vehicles may continue to share personal information, including photographs, with the Courts and the Courts may redistribute this information, as long as they are doing so for permissible purposes. S.C. Op.Atty.Gen. (April 6, 2011) 2011 WL 1740736.