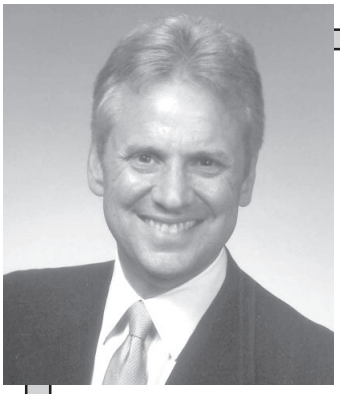
Public Official's Guide to Compliance with South Carolina's Freedom of Information Act

(with 2003 Amendments)



The State of South Carolina

Office of the Attorney General

Dear Public Official:

The Freedom of Information Act (FOIA) was designed to give the public and the press access to the workings of their government. Indeed, a representative democracy cannot function in secrecy. As the General Assembly stated in drafting South Carolina's FOIA:

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 the 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 person seeking access to public documents or meetings.

In other words, we should not only follow the law literally, but should also adhere to its spirit by making certain that we fulfill every legitimate FOIA request promptly and without inconvenience to those seeking information. The Attorney General's Office operates on the following principles in opining on the FOIA:

When in doubt, disclose requested information.
When in doubt, post the time, place, and purpose of the meeting.
When in doubt, open the meeting to the public.
When in doubt, release the document.

If you have any future questions about FOIA requests, this primer, provided by the S.C. Press Association, should provide you with answers. I would only add that a diligent and alert press is a necessary ingredient of good government and that, as public officials, we have a duty to assist members of the media in the exercise of their responsibilities.

Yours very truly,

Henry McMaster
South Carolina Attorney General

Public Official's Guide to Compliance with South Carolina's Freedom of Information Act

Correct as of June 2003

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

Prepared by Niki Downey, Legislative Council, June 23, 2003

Please note: Language underlined in this document was added by S.34 of 2003, but unless the Governor signs S.34 it will not become law. The Governor has through January 14, 2004, to sign or veto S.34. If he does neither, S.34 becomes law as of January 15, 2004.

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Additional copies of this booklet are available from the S.C. Press Association, P.O. Box 11429, Columbia, S.C. 29211. The cost is $1.50 each plus postage.

This booklet can also be found on the World Wide Web in Portable Document Format (PDF) via the S.C. Press Association home page: http://www.scpress.org. Click on the box on the right side of the site that says "FOIA."

An Introduction to the South Carolina Freedom of Information Act

If you take literally the preamble to the United States Constitution, then it's clear that "we the people" are the foundation for American government.

Here in South Carolina, the Freedom of Information Act also is by and for the "citizens," and the news media as their representatives, as a means to witness and gather information about government actions.

As a journalist who's worked in six states over a 30-year career with The Associated Press, experience has shown that the best governments – state, county and community – offer the greatest access to their activities and records.

This guide provides the complete text of South Carolina's Freedom of Information Act, which guarantees every citizen the right to attend government meetings – at all levels – and obtain official documents and records.

The FOIA is the people's law, although it is most often used by the news media in its watchdog role of reporting from the Statehouse, the county courthouse or from city hall. Most of this "Sunshine Law" has been on the books in South Carolina since 1976. It was updated by the General Assembly in 1987 and again in 1998, 2000, and 2003, largely at the behest of the South Carolina Press Association and its FOI Committee.

FOI laws are often called "Sunshine Laws" because they let the light shine in on government meetings and records.

This booklet contains, in addition to the law itself, a plain-language text that explains the law and how it should be applied if government is to be as open and responsive as the people expect.

– By John Shurr, chief of bureau, The Associated Press, and chairman, S.C. Press Association Freedom of Information Committee

Responding to an FOIA Request

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

1. Jot down the date on the letter immediately so you'll know later when it arrived.

2. Calculate how many "working" days, excluding weekends and holidays, between the arrival date and the end of the time allowed for a reply.

3. Check to see if the request is for copies of documents or for an opportunity to inspect documents. The public and news media are entitled to both.

4. Determine whether there will be costs other than those for simple copying. You may charge a fee not to exceed the actual cost of searching for and making copies. Keep in mind that costs can be waived if the information is in the "public interest" to release. Many citizen and news media requests fall into this classification.

5. Notify in writing the requesting party that the request has been received and give an reasonable timetable for your response. Include information about costs. Try not to wait the maximum time limit. Some public bodies tend to delay as long as possible but this runs contrary to the intent of the law and doesn't help your relationships with the public or press.

6. Try to determine the best way to make the requested information available. In other words, a phone conversation with the requesting party might be in order.

7. Remember that the public is granted access to public records and that includes all books, maps, photos, papers, cards, magnetic tapes, computer data, or other documentary materials in the possession of a public body.

8. Invest a little effort in being cordial. It'll be time well-spent.

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

Freedom of Information Act
Chapter 4, Title 30, *Code of Laws of South Carolina*

SECTION 30-4-10. Short title.

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

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

SECTION 30-4-15. Findings and purpose.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

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

SECTION 30-4-20. Definitions.

(a) "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

The definition of "person" also includes businesses and organizations.

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

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

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

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

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

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

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

The next section sets basic rules for access to public records. It says any person has the right to inspect a public document unless it is specifically exempt by other parts of the law. It also says the public body may set "reasonable" rules for time and place of access.

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) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access.

The message below is that you may charge for copying and for searching out documents. But charging is NOT mandatory and setting costs that are clearly prohibitive ranks as a bad way to make friends with the public and the press. Important language in this subsection again is the word "reasonable." Public bodies cannot charge one fee for one person and a different fee for another. The language is also clear in that the records must be furnished at the lowest possible cost and in a convenient and practical form. There is also a provision to provide the documents free when the information is "primarily benefiting the general public." News reports based on public documents almost always benefit the public.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

This is the so-called "15-Day Rule." Public bodies must respond in a timely fashion — in this case no longer than 15 working days. If there will be a delay beyond 15 days, that fact should be discussed in writing with the requesting party. Failure to respond at all within 15 days makes the requested information automatically public. Public bodies that routinely wait the maximum 15 days are not acting in the spirit of the FOIA and risk ruining relationships they have with the public and news media. Public bodies that routinely require formal written FOIA requests run the same risks.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

This section requires that certain basic records be made available to the public without a written request during business hours. There is no waiting period to view these records. These records are: minutes of meetings, records containing basic details of a crime and documents showing who is being held in jail. To ease the burden on public officials, there are time limits as to how far back these records must be kept ready for immediate access.

(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 without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

(1) minutes of the meetings of the public body for the preceding six months;
(2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day; and
(3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months.

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

SECTION 30-4-40. Matters exempt from disclosure.

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

If you're doing business or dealing with a company whose proprietary interests are contained in records, those documents do not have to be made public. Other documents exempt from the law are records containing paid subscriber information and

customer lists.The definition of trade secret establishes the outer limit of what may be withheld.

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

This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards. They not only need to be clean in the performance of their duties but they need to be perceived as clean. Private details about public officials, when such information has no bearing on official duties, may be withheld.

(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

The following list of law enforcement records allows secrecy for records about: informants, information that may lead to an arrest or prosecution, special investigation methods, information that could lead to personal harm, and intercepted communication.

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

(A) disclosing identity of informants not otherwise known;
(B) the premature release of information to be used in a prospective law enforcement action;
(C) disclosing investigatory techniques not otherwise known outside the government;
(D) by endangering the life, health, or property of any person; or
(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

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

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

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

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

(a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;
(b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is

executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business:

(1) requiring the expenditure of public funds or the transfer of anything of value,
(2) reducing the rate or altering the method of taxation of the business or industry, or
(3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:
  (a) the offer to attract an industry or business to invest or locate in the offeror's jurisdiction is accepted by the industry or business to whom the offer was made; and
  (b) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following exemptions deal with reports and plans for investment of endowment and pension funds (Section 16), bridge structural plans and designs [Sections 17(a) and 17(b)], and autopsy images but not reports (Section 18).

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

(17) Structural bridge plans or designs unless:

(a) the release is necessary for procurement purposes; or

(b) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos and other visual images, and audio recordings of an related to the performance of an

autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

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

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

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

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

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

SECTION 30-4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined.

(A) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 "Distribution of Off-site Consequence Analysis Information", or 10 CFR 73.21 "Requirements for the protection of safeguards information", must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

(1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and

(2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, "vulnerable zone" is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

In the following section, the Legislature makes certain that specified types of information are clearly public record. The list is very straightforward.

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) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

The following subsection is on the books at the behest of law enforcement officials who want to keep certain businessmen from getting names and addresses from incident reports and using that information to solicit business. The key words here are "commercial solicitation." Neither the general public nor the press are affected.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

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

SECTION 30-4-55. Disclosure of fiscal impact on public body due to offer made to attract business or investments.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

(a) the offered incentive or expenditure is accepted, and
(b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. Notwithstanding the requirements of this section, information that is

otherwise exempt from disclosure under Section 30-4-40(a)(1), (a)(5)(c), and (a)(9) remains exempt from disclosure.

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

SECTION 30-4-60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter.

The following section would give the governor the option of closing his or her cabinet meetings unless they are convened to act upon a matter over which the governor has granted the cabinet jurisdiction or advisory power. Most governors favor open government so this section would clearly present a conflict should cabinet meetings be closed in the future. At this writing, they are open and the governor has spoken clearly of his support for open meetings, including those of his cabinet, because his office needs to set a good example for other public bodies.

SECTION 30-4-65. Circumstances under which Governor's cabinet meetings are subject to this chapter.

(A) The Governor's cabinet meetings are subject to the provisions of this chapter only when the Governor's cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power.

(B) For purposes of this chapter, 'cabinet' means the directors of the departments of the executive branch of state government appointed by the Governor pursuant to the provisions of Section 1-30-10(B)(1)(i) when they meet as a group and a quorum is present.

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

SECTION 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

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

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

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

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

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

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

This subsection protects discussions that may lead to criminal prosecution.

(4) Investigative proceedings regarding allegations of criminal misconduct.

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

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

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

(6) The State Budget and Control Board, while meeting as the trustee of the State Retirement System, or of the State Retirement Systems Investment Panel, if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C).

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

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

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

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the

spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

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

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

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

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

(f) The Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C).

This section of the FOIA is important, particularly for the staff employed by public bodies. It spells out notice requirements for meetings and the content of such notices. It says an agenda should be made available at least 24 hours before scheduled meetings. For special meetings, notice of the time, place and agenda must be given. Again, the deadline is no later than 24 hours in advance. Emergency meetings are the exception and they can be held on a moment's notice, but the purpose must be clearly of an emergency nature. Meeting notices must be in writing.

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. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda, date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

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

(b) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

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

(c) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (a), must make reasonable and timely efforts to give notice of their meetings.

If there were any doubt about meeting notices being in writing, this clears it up. Such efforts must include posting a

meeting announcement where the public body commonly meets.

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

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

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

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

SECTION 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.
(2) The members of the public body recorded as either present or absent.
(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.
(4) Any other information that any member of the public body requests be included or reflected in the minutes.

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

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with Section 30-4-70 of this chapter.

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

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

This section puts teeth into the FOIA. It gives any citizen the right to ask their Circuit Court to intervene and determine whether an FOIA violation has occurred. The statute of limitations is one year. A judge determines appropriate relief.

SECTION 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be

considered to be an irreparable injury for which no adequate remedy at law exists.

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

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

Those who violate the FOIA might find themselves poorer and/or in prison. Both are possibilities under this statute. It is a misdemeanor that can result in a $100 fine and not more than 30 days in jail for first offenders. The penalties double and then triple for subsequent offenses.

SECTION 30-4-110. Penalties.

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

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

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

(A) This chapter does not allow the Department of Public Safety to sell, provide, or otherwise furnish to a private party Social Security numbers in its records, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card.

(B) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

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

(A) The Department of Public Safety 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.

Supreme Court's Bellamy vs. Brown ruling protects public officials when releasing public records

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

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

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

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

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

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

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

Folowing this Supreme Court decision, the General Assembly amended the FOIA to state clearly that a public body may disclose any record that is subject to an exemption from mandatory disclosure. Section30-4-40 (a).

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