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SCSBA

2017 School Law Conference

*Sunshine on My Shoulders:
Understanding the New FOIA Requirements
and Remedies Available to Public Bodies*

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Applicability of the South Carolina FOIA

SECTION 30-4-20. Definitions.

(a) "Public body" means...school districts...

(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.

USE E-MAILS CAUTIOUSLY

- Public records maintained by the District are subject to release under the South Carolina Freedom of Information Act ("FOIA").
- Exceptions to the release of e-mails under FOIA include such things as:
 - "educational records" protected under the Family Educational Rights and Privacy Act ("FERPA")
 - documents subject to attorney/client privilege
 - documents including information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy
- Subject to disclosure pursuant to:
 - subpoena upon parental request of a child's education record under FERPA

Right to Request Public Records Under FOIA

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.

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

Section 30-4-30. (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.

Electronic records and transmission of public records.

A person has a right to receive an electronic transmission of any public record; however, a public body is not required to create an electronic version of a public record when it does not exist. Further, copy charges may not apply to public records transmitted electronically, but 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.

Fees for the search, retrieval, or redaction of public records.

A public body may charge reasonable fees, not to exceed the actual cost of the search, retrieval, and redaction of records, in responding to a FOIA request. A public body must develop a fee schedule to be posted online. Any fee cannot exceed the prorated annual salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skills and training to search, retrieve, or redact the records. Additionally, a uniform fee for copying costs may be charged (except for records transmitted electronically) not exceeding the prevailing commercial rate.

A fee deposit not exceeding 25% of the total reasonable anticipated cost for production of the records may be required by the public body prior to searching for or making copies of records.

New timelines for responding to a FOIA request.

Instead of 15 business days, a public body now has only 10 business days to notify the person making the request of its determination as to the public availability of the requested public record. If the FOIA request seeks records more than 24 months old, then the public body has 20 business days to provide this notification. This initial notification and determination of availability, however, is not required to include a final decision or opinion as to whether specific portions of documents may be subject to redaction. Following the initial determination notice, or the receipt of any required fee deposit, whichever is latest, a public body has 30 calendar days (35 calendar days for records more than 24 months old) to actually produce the records responsive to the FOIA request. Finally, these timelines are subject to extension by written, mutual agreement, and such agreement shall not be unreasonably withheld.

Records that must be available for public inspection.

Amendments to §30-40-30 expand the categories of records that must automatically be made available for public inspection and copying, without the requestor being required to make a written request. Most importantly, the FOIA amendments now include in this class of records “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.” §30-4-30 (D). Although the automatic disclosure of these records is subject to the applicable exemptions under § 30-4-40 and other federal and state laws, school boards and their members must be aware that during public meetings, any records they review or distribute are subject to this provision and may be a public record.

Matters Exempt from Disclosure

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

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

SECTION 2. Section 30-4-40(a)(2) and (3) of the 1976 Code is amended to read:

(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....

(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....

(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.

Matters Declared Public Information

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

SECTION 3. Section 30-4-50 of the 1976 Code is amended to read:

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

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

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

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

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

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

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

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

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

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

(a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in-camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then released, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court’s findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

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

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

Public Meetings

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.

Executive Session

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....

(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.

Meeting Notices

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....

(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.

Board Meeting Minutes

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.

FOIA, Equitable Remedies, Time Constraints for Court Hearings

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

Section 30-4-100. (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.

Penalties

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

Section 30-4-110. (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.

**New Legal Remedies For Public Bodies
And Other Interested Persons And Entities.**

Public bodies now may file a civil action to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper FOIA requests, or where the public body is unable to make a good faith determination as to whether the information is exempt from disclosure. Likewise, a person or entity with a specific interest in records or information contained in records, which are exempt from disclosure under certain sections of the FOIA (i.e., §30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19)) also may file a civil action or intervene in a pending legal action to determine whether the information is exempt from disclosure. Attorney's fees and other costs of litigation may be awarded to a prevailing party in certain cases.

Limits On Use of Personal Information For Commercial Solicitation.

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

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

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.”

Prohibition Of Use Of Personal Information For Commercial Solicitation¹.

Local governments and political subdivisions, such as school districts, must provide a notice under the Family Privacy Protection Act, §30-2-50, to all persons who request or obtain records pursuant to the Family Privacy Protection Act, that obtaining or using public records for commercial solicitation directed to any person in South Carolina is prohibited.

¹ "Personal information" and "commercial solicitation" are defined in the Family Privacy Protection Act. These definitions are:

SECTION 30-2-30. Definitions...

(1) "Personal information" means information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports.

"Personal information" does not mean information about boating accidents, vehicular accidents, driving violations, boating violations, or driver status, or names and addresses from any registration documents filed with the Department of Revenue as a business address which also may be a personal address...

(3) "Commercial solicitation" means contact by telephone, mail, or electronic mail for the purpose of selling or marketing a consumer product or service. "Commercial solicitation" does not include contact by whatever means for the purpose of:

- (a) offering membership in a credit union;
- (b) notification of continuing education opportunities;
- (c) selling or marketing banking, insurance, securities, or commodities services provided by an institution or entity defined in or required to comply with the Federal Gramm-Leach-Bliley Financial Modernization Act, 113 Stat. 1338; or
- (d) contacting persons for political purposes using information on file with state or local voter registration offices.

Schedule of Fees for Public Records
South Carolina Freedom of Information Act (§ 30-4-30(B))

A reasonable fee not to exceed the actual cost will be charged for the search, retrieval, and, when appropriate, redaction of records produced in response to a request for public records under the South Carolina Freedom of Information Act (“FOIA”). Additionally, copies will be charged at a cost not to exceed the prevailing commercial rate for the producing of copies. In certain cases, particularly FOIA requests in which a large number of records or confidential information is requested, a deposit not exceeding 25% of the total estimated fee will be required prior to commencing the retrieval and production of records.

Reasonable efforts will be made to produce records at the lowest possible cost, and the following fee schedule will apply:

- Copying cost
-
- s will be charged at a commercially reasonable rate of \$0.10 per page, and, the fee for non-standard size documents, such as architectural plans or property plats, will be individually determined at the time of copying based on actual copying cost.
- Search, retrieval, and redaction costs of records will be charged at 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 search, retrieval, and, if appropriate, redaction. Records requests involving specialized, technical, or confidential information, or otherwise requiring redaction, will in many cases require an employee with a higher salary to perform the search, retrieval, and/or redaction. The fee rate, accordingly, will vary based on the nature of the records requested, depending on the necessary skill and training level necessary. However, the current minimum applicable fee rate is \$_____ per hour. Employee time will be billed based on 1/4 hour increments.

The fee schedule may vary from time to time as hourly wages, salaries, and commercially reasonable copying costs change.

Fees will not be charged for examination and review of documents to determine if the documents are subject to disclosure. Additionally, copying costs will not be charged for copies of records that are transmitted in electronic format, although if requested records are not already in electronic format, fees will be charged for staff time required to transfer the documents to electronic format.