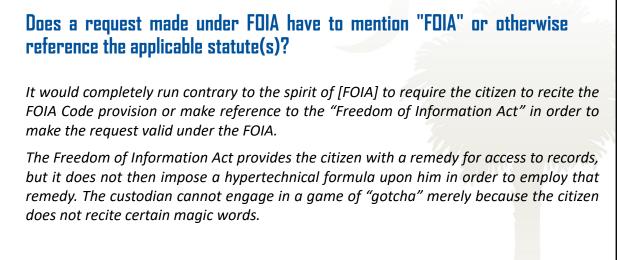
A WRONG TURN COULD COST YOU \$44,402.50: FAQs to Help You Navigate the FOIA Landscape

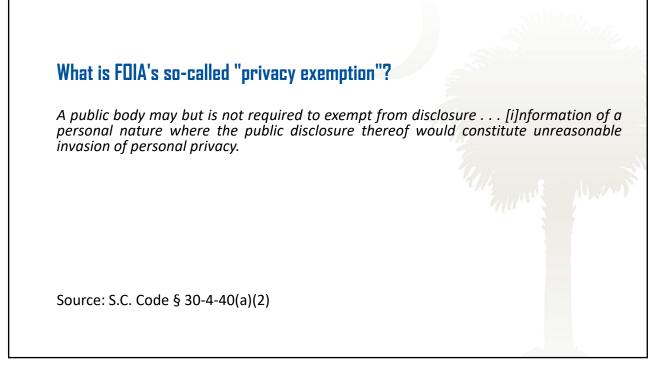
August 24, 2019

Warren V. Ganjehsani Chief Legal Counsel, S.C. Technical College System

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Source: S.C. Attorney General's Office (June 23, 1997 Opinion)





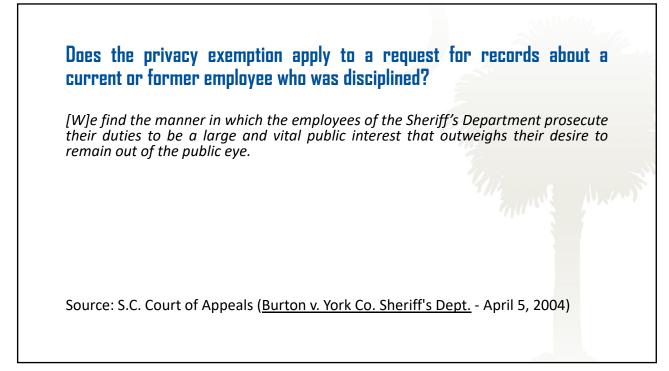
home addresses¹

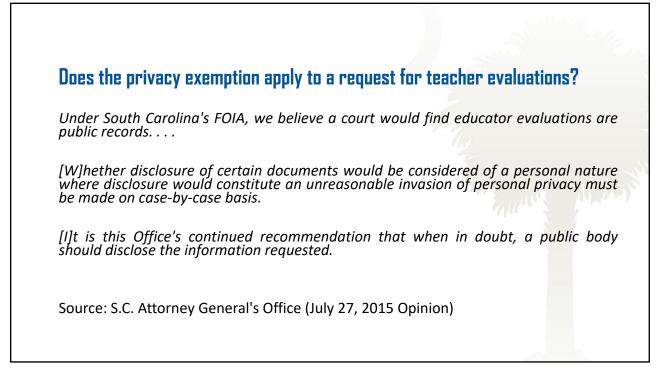
personal e-mail addresses¹

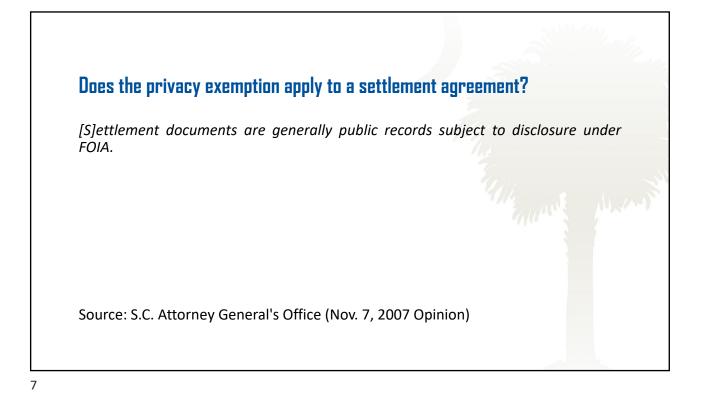
personal telephone numbers¹

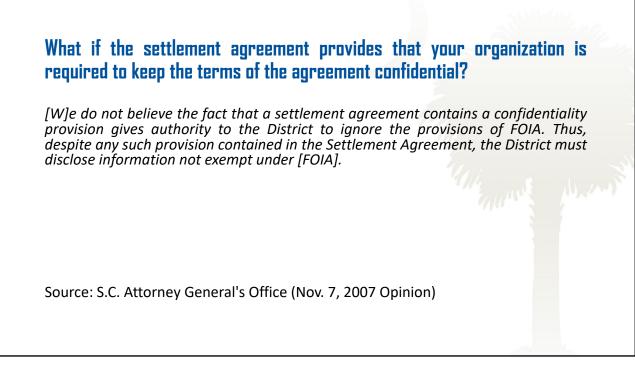
names of South Carolina Lottery winners²

Source: S.C. Court of Appeals (¹<u>Glassmeyer v. City of Columbia</u> - Sept. 2, 2015; ²<u>S.C. Lottery Commission v. Glassmeyer</u> - July 31, 2019)







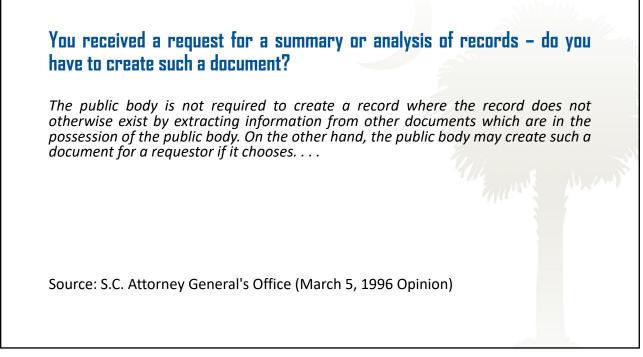


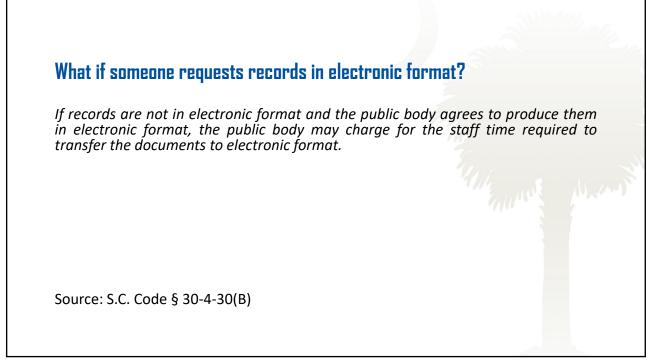
Does the privacy exemption apply to a request for records about a current or former employee who (1) was the subject of a complaint but was not investigated or (2) was investigated but not disciplined?

If the complaints against [the employee] allege that he violated the law or used his authority to perform activities which constitute "conduct unbecoming" an officer, the public has a right to know why the Department failed to investigate the allegations or discipline [the employee].

[E]ven if Plaintiff's complaint appeared to implicate private or personal information regarding [the employee], there exists a significant public interest regarding [his] activities and the Department's response that substantially outweighs his right to privacy.

Source: S.C. Circuit Court (<u>Glassmeyer v. City of Columbia</u> - Order issued July 23, 2014)





You received a request under FDIA about a matter that is currently in litigation – does the fact that there is a pending court case provide a blanket reason to deny the request?

In sum, we decline to depart from precedent by imposing a blanket prohibition on disclosure whenever the person seeking public records is simultaneously being sued by the public body in possession.

If the government . . . seek[s] protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record.

Source: S.C. Court of Appeals (Pope v. Wilson - June 19, 2019)

You received a request (not a judicial order or subpoena*) from a law enforcement agency for FERPA-protected information about a student – can you provide it?

If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Sources: 34 C.F.R. § 99.36(c); S.C. Attorney General's Office (Feb. 12, 2012 Opinion)

*Different statutory/regulatory provisions apply to complying with judicial orders and subpoenas. See 20 U.S.C. § 1232g(b)(2)(B) and 34 C.F.R. § 99.31(a)(9)(ii).

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Before going into executive session, is it sufficient to announce the purpose of doing so is "a personnel matter," "to discuss a proposed contract," or other general terms?

FOIA is clear in its mandate that the "specific purpose" of the session "shall be announced."

Therefore, FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private. As evidenced by the minutes, the presiding officer did not announce the specific purpose of the executive session. This was a violation of FOIA.

Source: S.C. Supreme Court (Donohue v. City of N. Augusta - June 17, 2015)

What are common "specific purposes" for going into executive session? 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; 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. (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

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Do minutes have to be taken during executive session?

S.C. Attorney General's Office (Sept. 21, 1984 Opinion):

FOIA deals specifically only with minutes of public sessions and does not expressly address minutes of executive sessions. However, even though such minutes are not expressly required, a close reading of [S.C. Code §] 30-4-90(b) reveals an anticipation of minutes of executive sessions being kept.

Municipal Association of S.C. (Handbook for Municipal Officials, Dec. 2017):

The municipality must keep minutes for all meetings except executive sessions. If minutes of executive sessions are kept, they are not subject to public disclosure under the Freedom of Information Act. However, they may be discoverable in a court action.

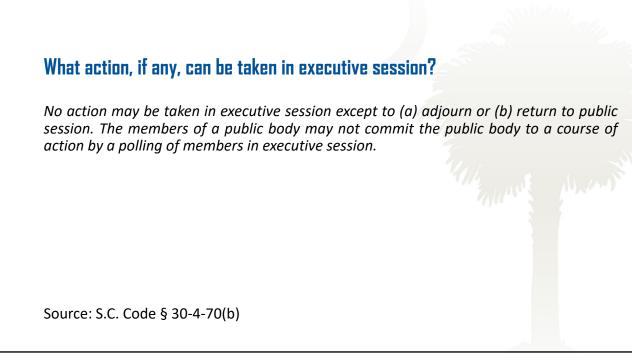
Do minutes have to be taken during executive session? (Continued)

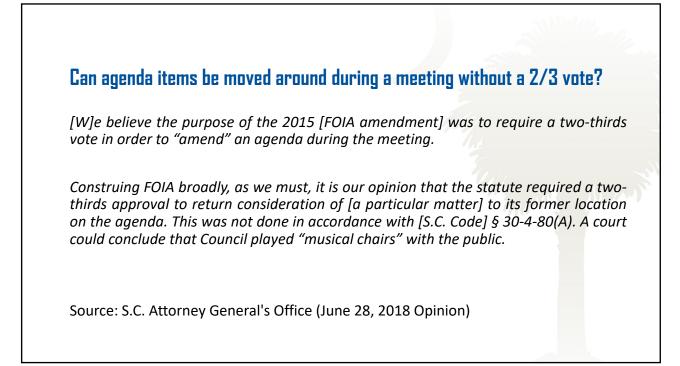
S.C. Association of Counties (Handbook for County Govt., Fifth Ed.):

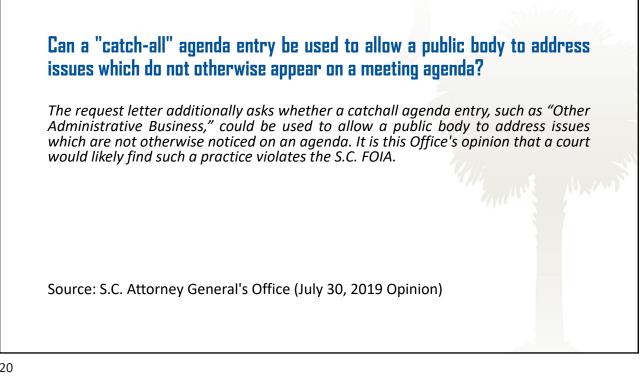
Executive sessions, which are limited to a few specific purposes, allow frank discussions about sensitive matters. Discovery of such information defeats the purpose of executive sessions; for this reason, taking of minutes of executive sessions is not recommended. Furthermore, minutes — once taken — are public records and must be maintained as required by the FOIA. Even if the minutes are not discoverable under present law, a future amendment to the FOIA could open up the information in these old minutes.

S.C. Association of Counties (FOIA Handbook, 2018):

The Act is not clear on whether written minutes of executive session are required. While the Association of Counties has traditionally advised that written minutes of executive session are not required by the Act, there are differences of opinion in the legal community.







If my organization is sued for violating FOIA and loses, will it have to pay the opposing party's legal fees?

[T]his Court finds that the Plaintiff prevailed in the underlying matter and is entitled to attorney[']s fees and costs as provided by [FOIA].

[T]he Court finds that the Plaintiff is entitled to \$43,693.00 for . . . fees and \$709.50 for costs for a total recovery of \$44,402.50.

Source: S.C. Circuit Court (<u>Glassmeyer v. City of Columbia</u> - Order issued Oct. 4, 2018)