

2020 SCSBA ANNUAL CONFERENCE  
New Board Members' Orientation  
2/20/20

## The South Carolina Freedom of Information Act: Government in the Sunshine (or in a Fishbowl)

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## FOIA – FINDINGS & 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.”*



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## FOIA – HISTORY

- \* South Carolina first adopted a freedom of information act in 1974 to provide access to the meetings and records of public bodies like school districts.
- \* The law has been amended several times, most recently in 2017.
- \* Courts and the SC Attorney General's office continue to interpret FOIA's provisions, almost always in ways in favor of greater openness.



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## FOIA PROVIDES FOR:

- \*Inspecting/Copying public records of the public body
- \*Noticing/conducting meetings of the body



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## FOIA - RESPONSIBILITIES

- \*Administration primarily deals with access to records
- \*Board primarily handles meeting requirements, with assistance from the administration



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## WHO IS SUBJECT TO FOIA?

- \*"Public bodies": includes all political subdivisions, including school boards and districts
- \*Board committees, subcommittees, advisory committees



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## FOIA - MEETING REQUIREMENTS

- \*A convening of a quorum of the public body in person/electronically to conduct the Board's business
- \* "Work session" meetings
- \*Emails among a quorum??



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## FOIA - MEETING NOTICE/AGENDA

- \*Regular meetings: written notice at beginning of year, notice with agenda at least 24 hours in advance, notice to local media
- \*Special Called meetings: notice/agenda at least 24 hours in advance
- \*Emergency meetings: reasonable notice



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## FOIA - AGENDA AMENDMENTS

- \*At least 24 hours in advance
- \*Amendments at the meeting:
  - Discussion-only item: follow district policy
  - Action item: 2/3 vote
  - Final action item: 2/3 vote & finding of emergency/exigent circumstance



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## FOIA - MINUTES

- \*Date, time, place; members present/absent; substance of matters proposed/discussed/decided
- \*Copies for past 6 months available for inspection



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## FOIA - EXECUTIVE SESSION

- \*Vote in open session, motion must be specific
- \*No action can be taken



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## FOIA - EXECUTIVE SESSION GROUNDS

- \*Hiring/firing/discipline of employees
- \*Student discipline hearings
- \*Receipt of legal advice



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## FOIA - EXECUTIVE SESSION GROUNDS

- \*Discussion of contractual negotiations & proposed sale/purchase of property
- \*Discussion of development of security devices/personnel
- \*Investigation of criminal conduct



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## FOIA - ACCESS TO PUBLIC RECORDS/INFORMATION

- \*"Public records" includes all records, regardless of form, prepared, owned, used or in possession of the public body
- \*Emails between and among staff, committee members, and among board members



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## FOIA - 2017 AMENDMENTS

\*Reduces time for initial response to requests to 10 days, but allows 30 days thereafter to produce records

\*If districts wish to charge for copies, fee schedule must be posted



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## FOIA - COMMON ITEMS/ISSUES re: DISCLOSURE

\*Information of a personal nature (personnel files, superintendent evaluations)

\*Compensation of Employees

\*Applicant information/materials



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## FOIA - COMMON ITEMS/ISSUES re: DISCLOSURE

- \*Materials re: proposed contractual relations
- \*Correspondence or work product of legal counsel
- \* Matters exempt under other laws, e.g., FERPA



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## HYPOTHETICAL SITUATION (1 of 6)

School Board X holds executive sessions at 6 PM before its open session at 7 PM, after first having dinner at 5:30 PM in a conference room adjoining the Auditorium where it meets in public. This evening the Board needs an executive session to hear a student discipline appeal and to consider purchase of a site for a new school.



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## HYPOTHETICAL SITUATION (2 of 6)

The notice/agenda states the Board meets at 7 PM in the Auditorium, after executive session. At 6 PM, in the conference room, with the door between the conference room and the Auditorium open, the Board Chair convenes the meeting and asks for a motion to go into ES for a “student appeal” and a “property matter.”



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## HYPOTHETICAL SITUATION (3 of 6)

The motion passes and the Board shuts the door between the two areas, conducts the student appeal and discusses the land purchase. When the Board deliberates on the student appeal, one Member the district’s “zero tolerance” policy for weapons.



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## HYPOTHETICAL SITUATION (4 of 6)

After discussing the land purchase, the Board takes a “straw poll” to see if a majority are in favor of buying the land.



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## HYPOTHETICAL SITUATION (5 of 6)

Once back in open session, the Board votes to uphold the discipline of “Student A” and to buy “a proposed school site” for a price not to exceed the “figure discussed in executive session.”



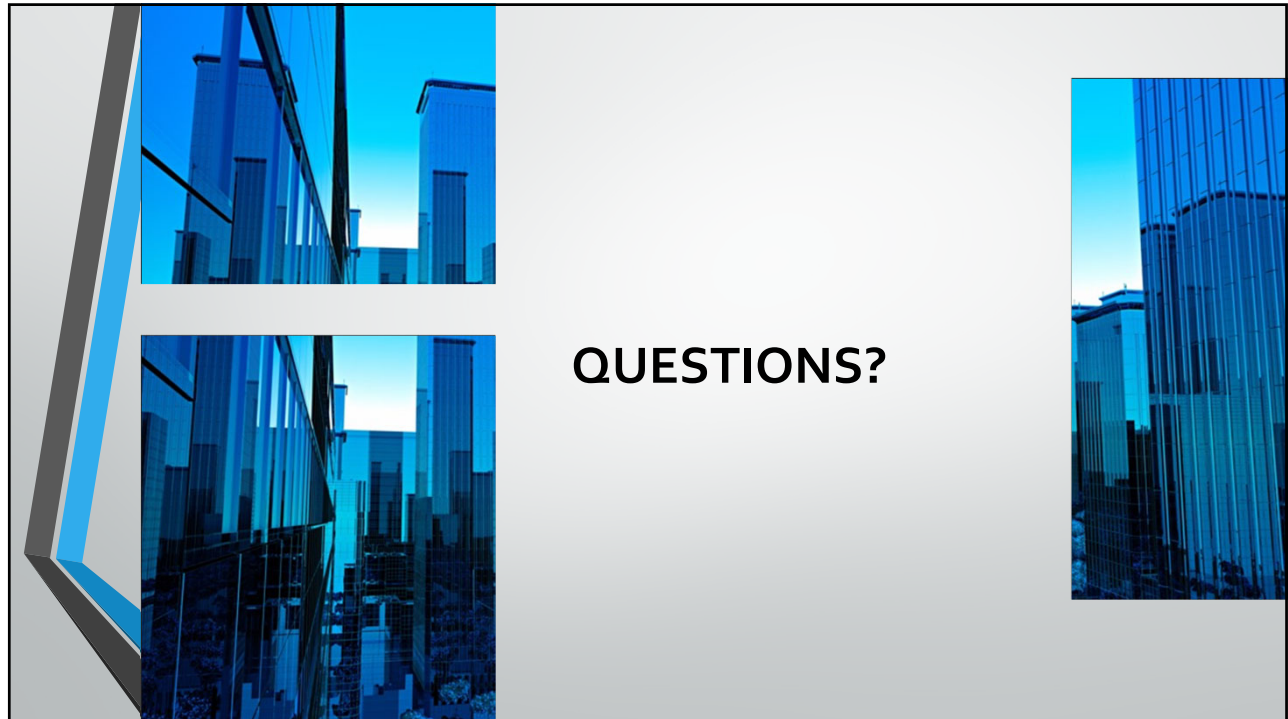
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## HYPOTHETICAL SITUATION (6 of 6)

The agenda for public session states only that the Board may vote on “items discussed in executive session,” without further specificity. After the meeting adjourns, a news reporter wants to know the designation of the offense committed and the name of the school and the grade level of “Student A” and the location and offering price for the proposed school site.



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## Contact us



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