

THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT: WHAT YOU NEED TO KNOW

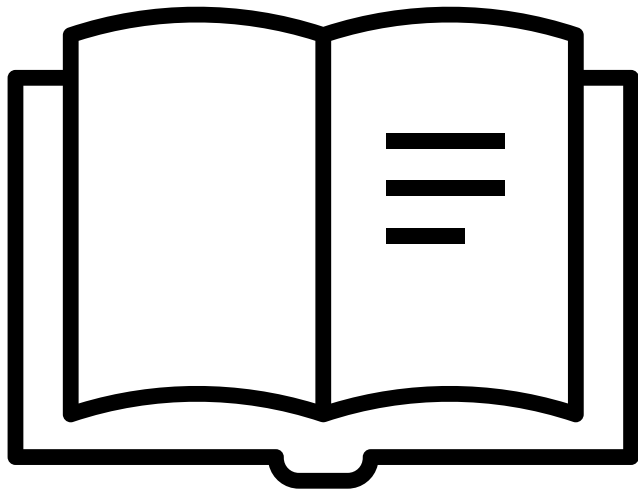
KATHY MAHONEY &

VERNIE WILLIAMS



HALLIGAN MAHONEY
& WILLIAMS

DEFINITIONS



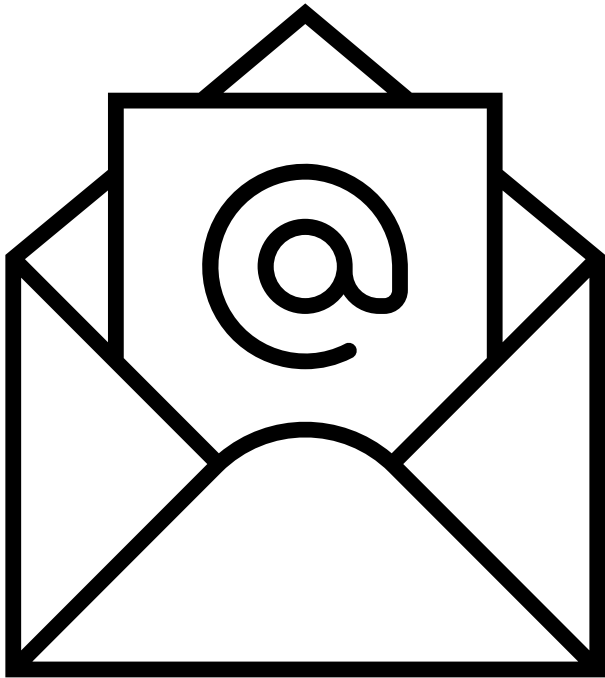
- “Public body” means... school districts... (§30-4-20(a))
- “Meeting” means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power. (§30-4-20(d))
- “Quorum” unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body. (§30-4-20(e))

DEFINITIONS (CONT.)

- “Public record” includes all books, papers, photographs, tapes, recordings or other documentary materials prepared, owned, used, in the possession of, or retained by a public body. (§ 30-4-20(c))



USE E-MAILS CAUTIOUSLY

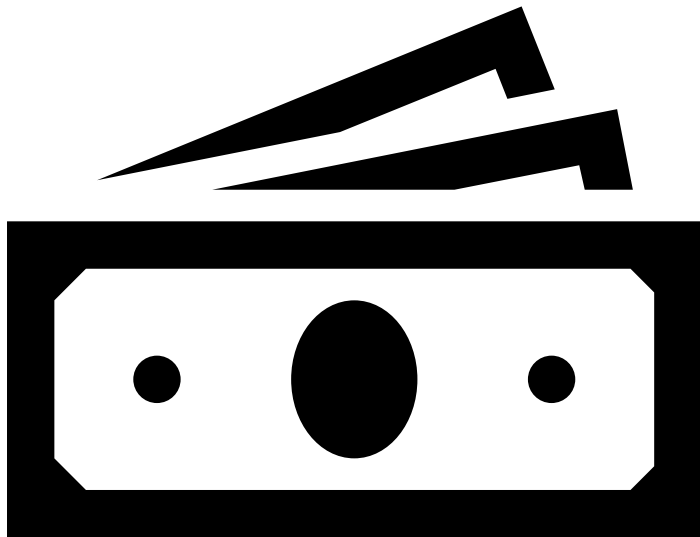


- Public records maintained by the District are subject to release under the South Carolina Freedom of Information Act (“FOIA”) and includes emails.
- Exceptions to the release of e-mails under FOIA include such things as:
 - “educational records” protected under the Family Educational Rights and Privacy 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.

SECTION 30-4-30

- **Right to inspect or copy public records**
 - 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.
- **Timeline to respond**
 - Each public body, upon written request for records ... 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 24 months old at the date the request is made, the public body has 20 days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification.
 - If the request is granted, the record must be furnished or made available for inspection or copying no later than 30 calendar days from the date on which the final determination was provided, unless the records are more than 24 months old, in which case the public body has no later than 35 calendar days from the date on which the final determination was provided.

SECTION 30-4-30 (CONT.)



■ Charging of fees

- 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...
- A deposit not to exceed 25% 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 the records.

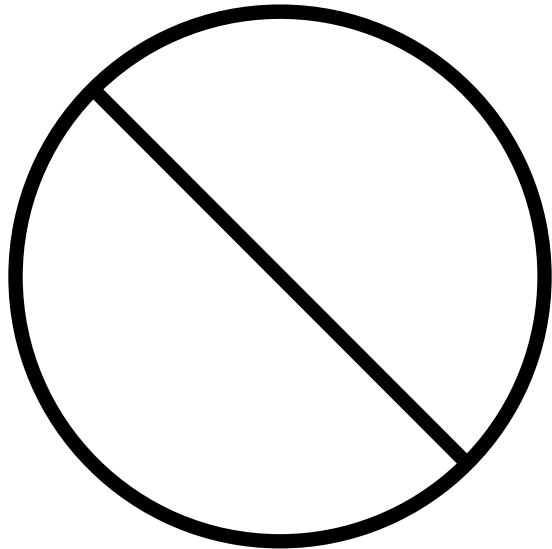
SECTION 30-4-30 (CONT.)

- 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 § 30-4-40, or other state or federal laws, without the requester being required to make a written request to inspect or copy the records when the requester appears in person:
 - Minutes of the meetings of the public body for the preceding six months; and
 - 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 months (§ 30-4-30(D)).

***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 revisions of this section, provided that the public body also shall produce documents pursuant to this section upon request.**

MATTERS EXEMPT FROM DISCLOSURE

SECTION 30-4-40



- **Examples of matters exempt from disclosure:**
 - Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. (30-4-40(a)(2))
 - Matters specifically exempted from disclosure by statute or law. (30-4-40(a)(4))

MATTERS EXEMPT FROM DISCLOSURE

SECTION 30-4-40 (CONT.)



■ Examples of matters exempt from disclosure (cont.):

- Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property. (30-4-40(a)(5))
 - 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.
 - 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.
- All compensation paid by public bodies except as follows: (30-4-40(a)(6)):
 - Generally, those employees receiving \$50,000 or more annually, the exact compensation
 - Generally, those employees receiving between \$30,000 and \$50,000 annually, the compensation level within a range of \$4,000
 - Generally, those employees receiving \$30,000 or less annually, the salary schedule showing a compensation range

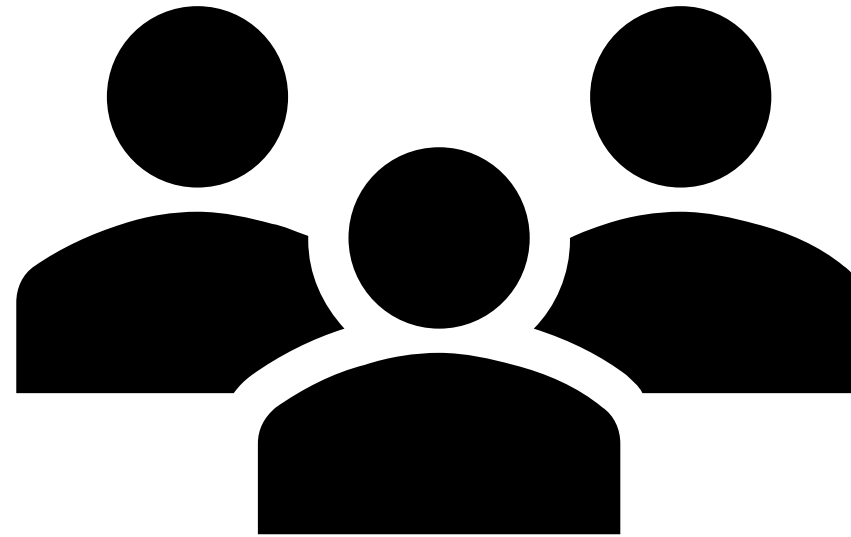
- **Examples of matters exempt from disclosure (cont.):**

- Correspondence or work product of legal counsel for a public body and any other material that would violate attorney/client relationships. (30-4-40(a)(7))
- All materials, regardless of form, gathered by a public body during a search to fill an employment position, except those 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. (30-4-40(a)(13))

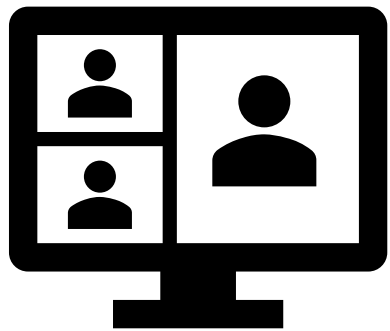
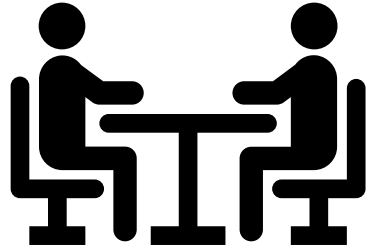
**MATTERS
EXEMPT FROM
DISCLOSURE
SECTION 30-4-40
(CONT.)**

SECTION 30-4-50

- **Matters declared Public Information include, among other things:**
 - the names, sex, race, title, and dates of employment of all employees and officers of public bodies; and
 - the minutes of all proceedings of all public bodies and all votes at such proceedings.



SECTION 30-4-60



■ **Public Meetings:**

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

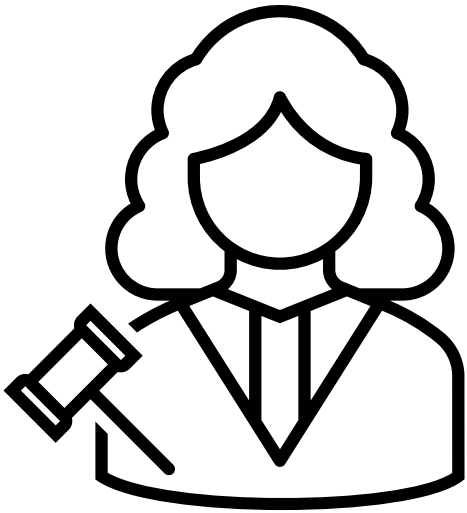
EXECUTIVE SESSION

SECTION 30-4-70

- **A public body may hold a meeting closed to the public (executive session) for one or more the following reasons:**
 - (a)(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.
 - (a)(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.
 - (a)(3) Discussion regarding the development of security personnel or devices.
 - 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.

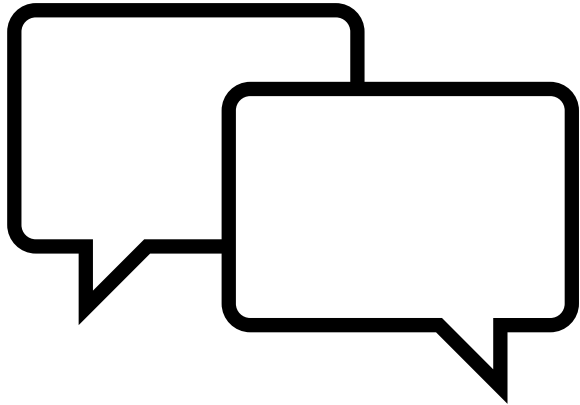
EXECUTIVE SESSION

SECTION 30-4-70 (CONT.)



- 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.
- 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.
- This chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

SECTION 30-4-80



■ Meeting Notices:

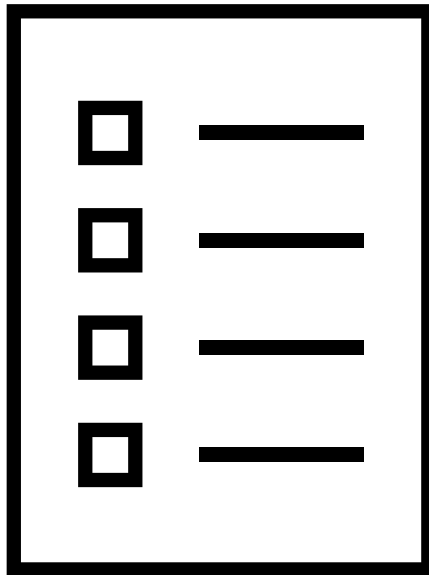
- All public bodies must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings.
- An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible 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.

SECTION 30-4-80 (CONT.)

■ Meeting Notices (cont.):

- 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.
- All public bodies shall notify persons or organizations, local news media, or other such 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.

SECTION 30-4-90



- **Minutes of meetings of public bodies:**
 - All public bodies shall keep written minutes of all their public meetings. Such minutes shall include, but need not be limited to:
 - The date, time and place of the meeting.
 - The members of the public body recorded as either present or absent.
 - 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.
 - Any other information that any member of the public body requests be included or reflected in the minutes.
 - 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.
 - 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.