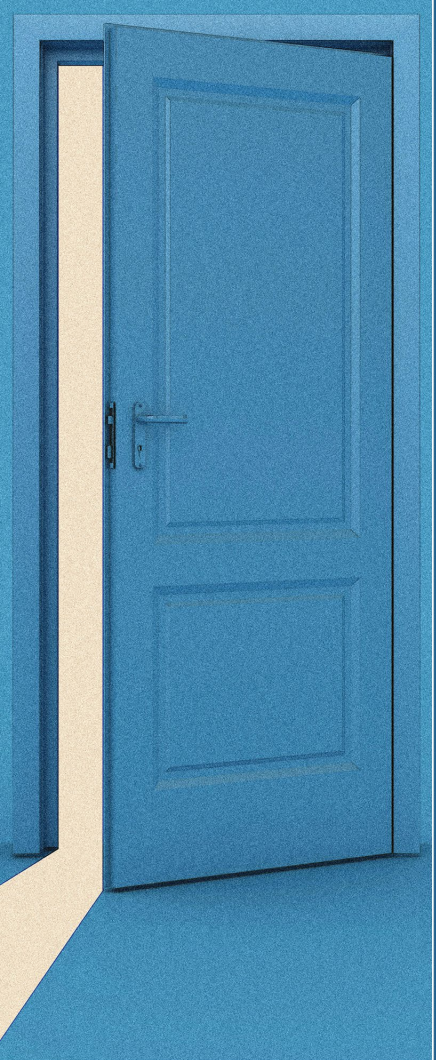


FOIA COMPLIANCE TIPS FOR CHAIRS



BEHIND CLOSED DOORS

STEPHANIE N. LAWRENCE, ESQ.
SCSBA GENERAL COUNSEL AND DIRECTOR OF POLICY AND LEGAL SERVICES



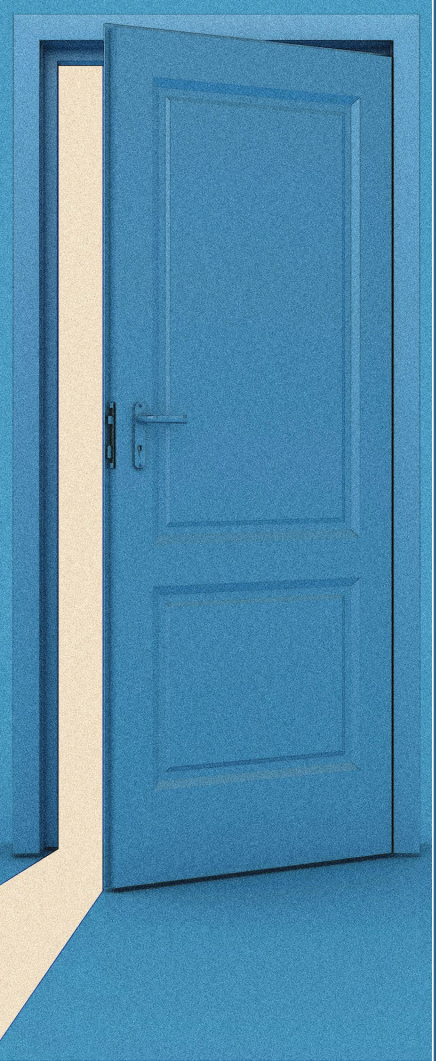
**WHAT WILL WE LEARN
TODAY AND . . . WHAT'S
BEHIND THAT DOOR?**

**BEHIND
CLOSED
DOORS**



- Statutory/Legal Authority
- Rules of Engagement
- Best Practice Recommendations
- Opportunity for Practical Application

BEHIND
CLOSED
DOORS



**WELL, HOW DO WE GET
BACK THERE?**

**BEHIND
CLOSED
DOORS**



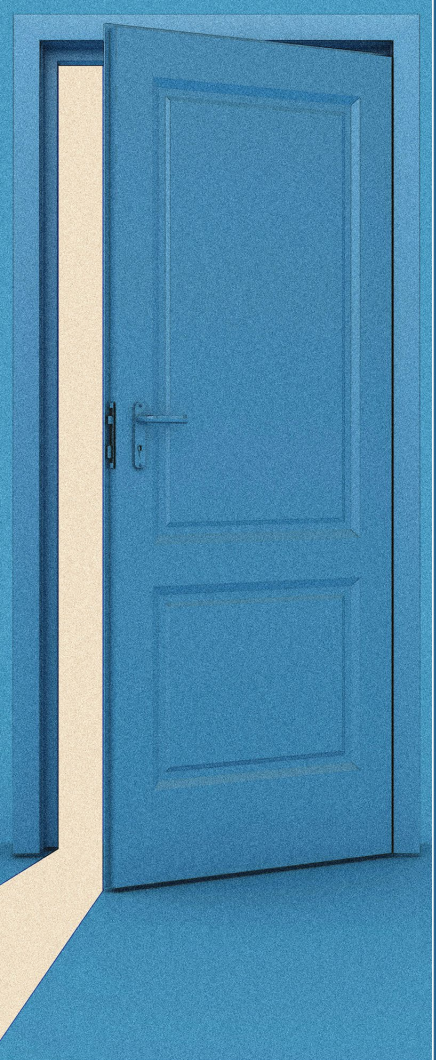
Executive Session is governed by

S.C. Code Ann. §30-4-70 Meetings which may be closed, procedure . . .

Before going into executive session, the board must vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session.

Per the statute, “Specific purpose” means a description of the matter to be discussed.

The motion to enter executive session should be as detailed as possible without compromising the issue.



**WHAT “SPECIFICALLY” CAN WE
DISCUSS WHILE WE’RE BACK
THERE?**

**BEHIND
CLOSED
DOORS**



S.C. Code Ann. §30-4-70(a)

There are five permissible grounds upon which a public body may convene in executive/closed session. These are the discussion of:

1. 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.
2. Negotiations incident to proposed **contractual** arrangements and proposed sale or purchase of **property**. The receipt of **legal advice** relating to a pending, threatened, or potential claim or other matters covered by 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.



The discussion of:

3. The development of **security** personnel or devices.

4. Investigative proceedings regarding allegations of **criminal** misconduct.

5. 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.



S.C. Code Ann. §30-4-70(b)

There are a couple of exceptions to the specificity requirement.

When the executive session is held pursuant to Section 30-4-70(a)(1), which is the employee and student provision;

or

When the executive session is held pursuant to Section 30-4-70(a)(5), which is the expansion of services and industries provision;

Then, 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.

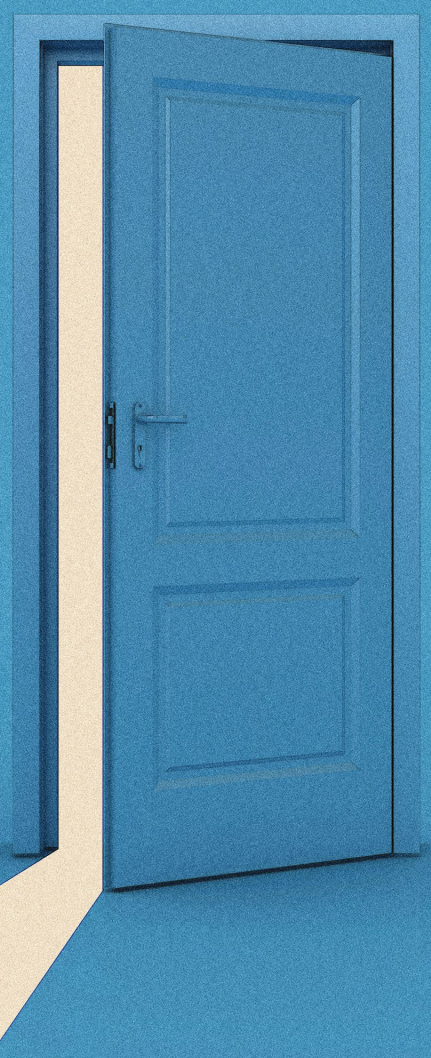


S.C. Code Ann. §30-4-70(b)

Since FOIA requires that you vote on entering executive session for specific allowable and stated reasons, the board must confine its executive session discussion to those topics.

The statute requires an **announcement** of the specific purpose(s). However, you will see that most, if not all, school boards also try to include it on the agenda.

Why do you think it is best practice to include it on the agenda in addition to announcing?

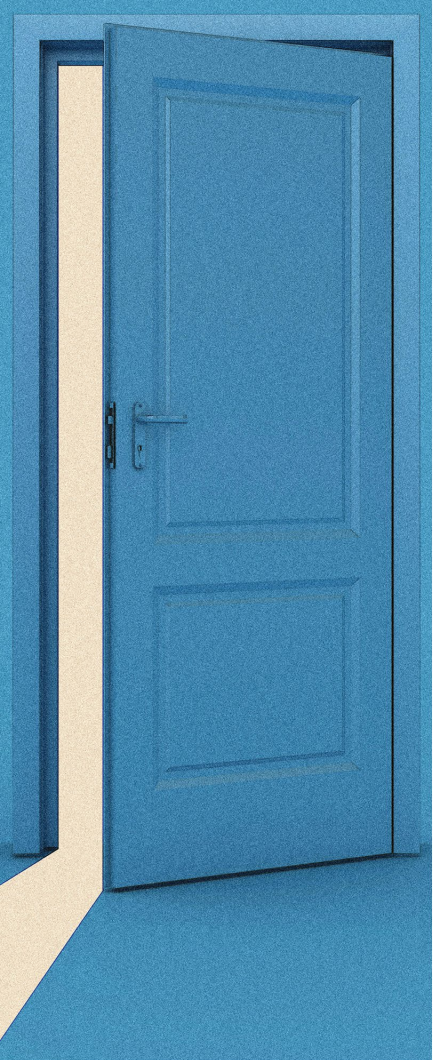


Q: Can the board vote to amend the agenda to include an executive session?

A: Yes. If within 24 hours of the meeting, the amendment to add the executive session to the agenda requires a 2/3 vote of the members present and voting, but not a finding of emergency or exigent circumstance because it is not a final action.

Q: Why is it not a final action?

A: Because no action can be taken in executive session except to adjourn or return to public session.



**WHAT CAN WE DO ONCE
WE'VE FINISHED THE
EXECUTIVE SESSION
DISCUSSION?**

**BEHIND
CLOSED
DOORS**




S.C. Code Ann. §30-4-70(b)

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 or voting inside of executive session.



Unnoticed items may be added to an executive session discussion at the time of the meeting. However, after the executive session concludes and the board reconvenes in open session, any action taken or decision made must be properly noticed. Brock v. Town of Mount Pleasant, 415 S.C. 625, 785 S.E.2d 198 (2016).

(In Brock, notice of the executive session was included on the agenda. The problem was that the town took unnoticed action after the executive session.)

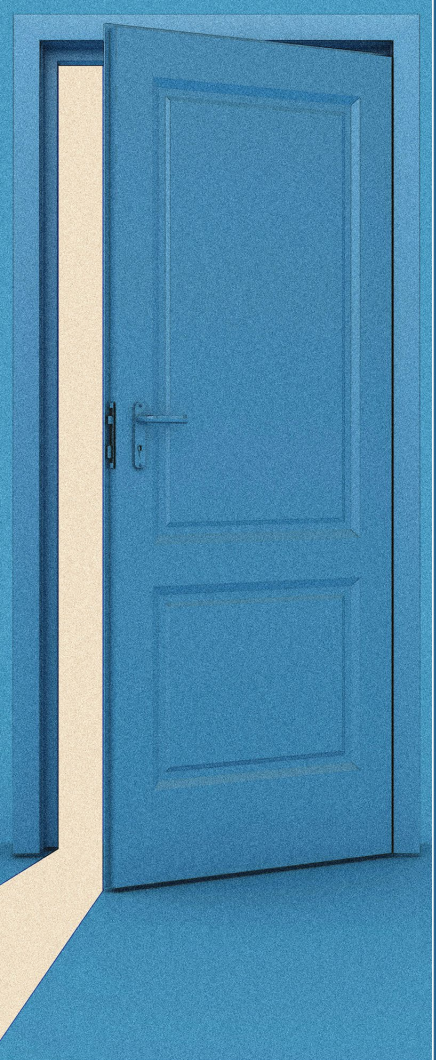


This does not mean that the agenda must specifically state the action to be taken or in some way forecast what the board will do following an executive session. To move on any item from executive session discussion, the agenda must reflect that upon returning to open session, some action would be taken.

Example:

“Action may be taken on the items discussed during the executive session.”

That said, there is no requirement (in statute or case law) that the board act on all items listed on the agenda.



**WHAT ARE THE CONSEQUENCES
IF WE IGNORE THESE RULES?**

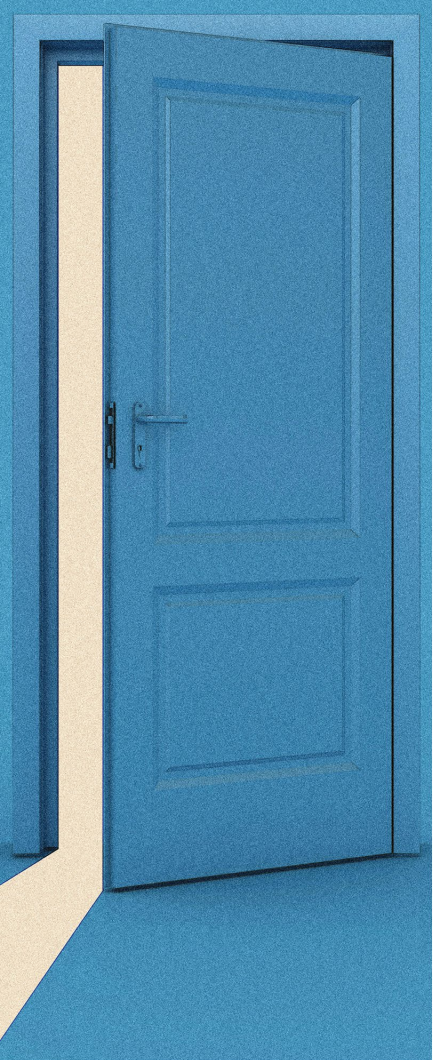
**BEHIND
CLOSED
DOORS**



Misuse of executive session is a violation of state law. If challenged, this can result in injunctive relief, civil fines, award of attorney's fees, and invalidation of whatever action was taken by the board.

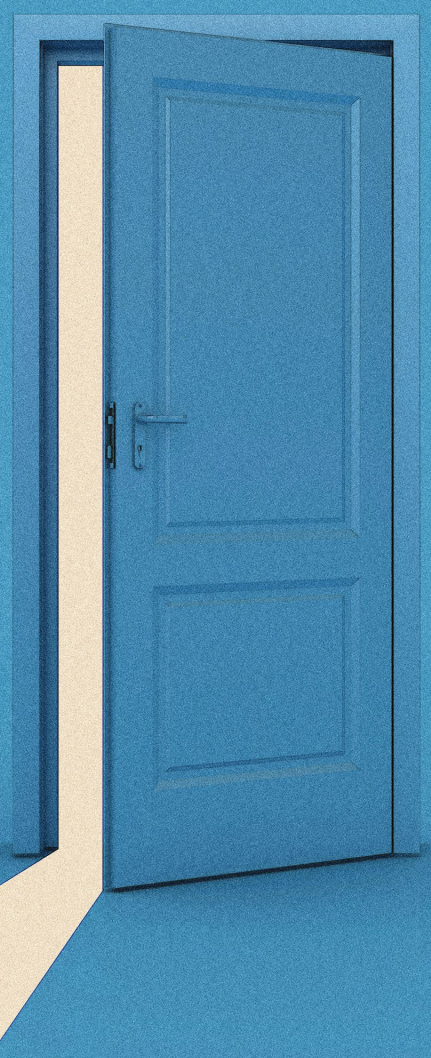
Most importantly, this type of behavior damages the relationship between the board and the local community.

BEHIND
CLOSED
DOORS



WHAT ABOUT KEEPING MINUTES AND/OR RECORDING EXECUTIVE SESSION?

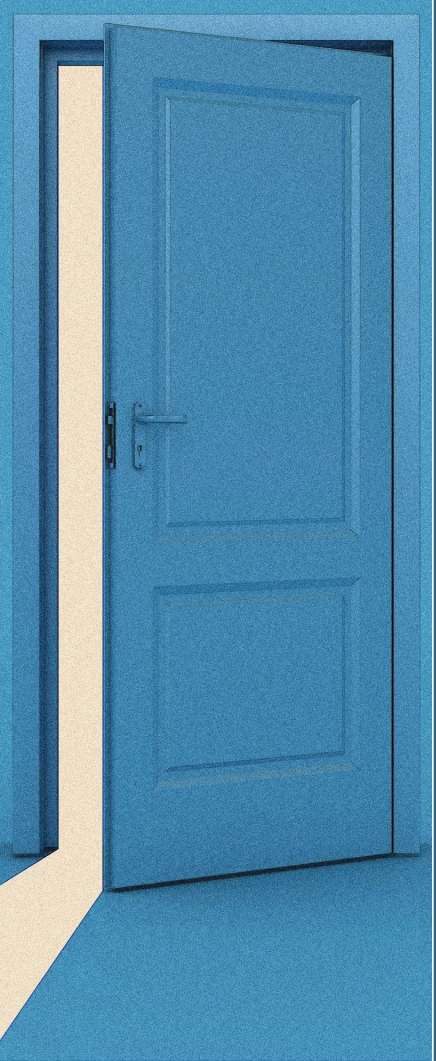
BEHIND
CLOSED
DOORS



S.C. Code Ann. §30-4-90. Minutes of meetings of public bodies.

The minutes shall be public records **except** where such disclosures would be inconsistent with the executive session parameters.

All or part of a meeting of a public body may be recorded by any person in attendance **except** when a meeting is closed for the executive session items we discussed.



**WHAT DOES THIS LOOK LIKE IN
REAL LIFE?**

**BEHIND
CLOSED
DOORS**

Personnel Matter



Likely not met – “discussion of employment matter”/
“discussion of personnel matters” / “personnel matters”

- Do not need to disclose the identify of the individual employee
- Could list department, division, class (i.e., certified)
- Helpful to include action words



Likely met – “to discuss personnel matters related to employment recommendations hirings and separations” / “discussion of personnel matters related to the evaluation of the Superintendent”

Contractual Matter



Likely not met – “discussion of negotiations incident to proposed contractual matter”/ “to discuss proposed contractual matter”/ “contractual matters”

- Could reference the name of party
- Could reference the service being contracted



Likely met – “to discuss contractual matter regarding ABC company”/ “discussion of proposed contractual matter regarding professional development services

Legal Advice/Attorney Client Privilege



Likely not met – “legal advice”/”legal matters”/ “to discuss legal issues”

- Could provide the case name or caption
- Could provide a description of the legal issue to be discussed



Likely met – “legal advice pertaining to matter ABC v. DEF”/
“receipt of legal advice subject to attorney-client privilege regarding Case No:1234”/ “receipt of legal advice concerning anticipated FOIA claim”

Property/Economic Development



Likely not met – “discussion of proposed sale or purchase of property”
“to discuss location, expansion, or the provision of services”

- Do not have to disclose the entity
- Could reference the service to be expanded
- Could reference the initiative or project name if applicable



Likely met – “discussion of contractual terms to obtain property for a new middle school in the district”/ “to discuss options for sale of vacant/unused property in the district”

Security Personnel or Devices



Likely not met – “discussion of security personnel or devices”/
“security”

- Do not have to disclose specific security measures
- Could reference the place



Likely met – “to discuss security needs for ABC High School”/ “to
receive information regarding completed security updates in the
district”

Investigative Matters

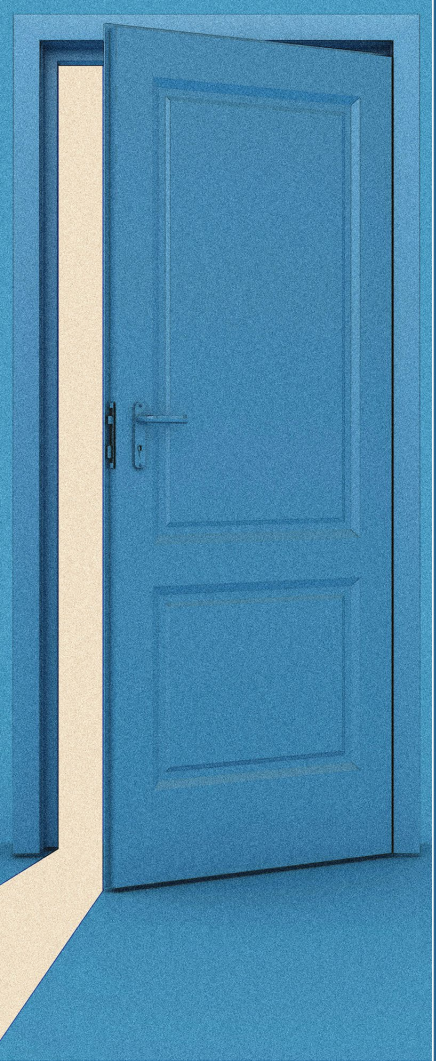


Likely not met – “investigative proceedings”/”investigative matters”

- Do not impede on criminal investigation
- Could reference the alleged misconduct

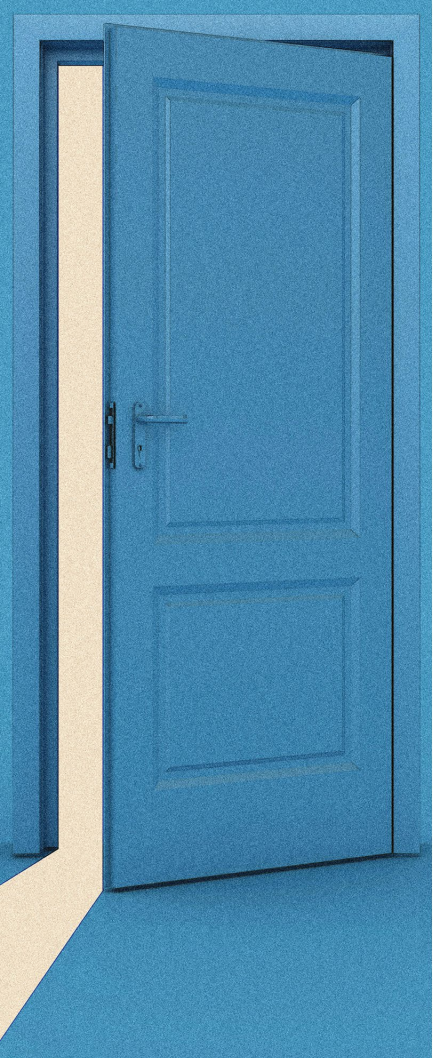


Likely met – “Receipt of legal advice regarding investigation of report of chrome book theft”/ “to discuss investigation of weapon found on a bus in the district”



HOMEWORK ANYONE?

BEHIND
CLOSED
DOORS



QUESTIONS?

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**BEHIND
CLOSED
DOORS**