

Basics of South Carolina Freedom of Information Act for New Board Members

SCSBA New Board Orientation
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Meredith L. Seibert
Duff Freeman Seibert, LLC



FREEDOM OF INFORMATION ACT (FOIA)

Findings and 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.”

Background & 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 or greater openness.

TWO MAIN COMPONENTS/PROVISIONS

**INSPECTION OR
COPYING OF PUBLIC
RECORDS OF PUBLIC
BODY**

**APPROPRIATE NOTICE
AND CONDUCT OF
MEETINGS OF PUBLIC
BODY**

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**INSPECTION OR
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**Primarily handled by district
administration and personnel**

**APPROPRIATE NOTICE
AND CONDUCT OF
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**Primarily handled by Board, with
assistance from district
administration and personnel**

Definitions - SC Code 30-4-20

Public Body - (a) "Public body" means . . . political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts . . . including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . .

Public Record - (c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. . .

Public records include emails maintained on system

Meeting - (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.

Quorum - (e)"Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

FOIA MEETING

**A convening of the public body to
conduct the board's business**

In person * Virtually * Other Electronic Means

Notice Of Meetings- SC Code 30-4-80

Regular meetings:

- Written notice at beginning of year of dates, times, and places
- Written notice with agenda at least 24 hours in advance, with notice to local media

Special Called meetings:

- Written notice with agenda at least 24 hours in advance, with notice to local media

Emergency meetings: Reasonable Notice

Notice Of Meetings- SC Code 30-4-80

Notice must include the dates, times, and places of meetings.

Agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or or meeting place of the public body and on a public website maintained by the body, if any, at least 24 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 24 hours before the meeting. This requirement does not apply to emergency meetings of public bodies.

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 . . .

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.

Changes to Meeting Agendas

- Once 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, action item may be added to the agenda by a two-thirds vote of the members present and voting;
- 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.

Public Meetings – SC Code 30-4-60

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



Including:
Board committees
Subcommittees
Advisory Committees

Executive Session – SC Code 30-4-70

A public body may hold a meeting closed to the public (executive session) for 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.

****For adversary hearings involving employee or client, that person still has right any existing right to public hearing, although names of others can be redacted at discretion of public body ****

- (2) Discussion of negations 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 situation involving the assertion against the agency of a claim
- (3) Discussion regarding the development of security personnel or devices

How to Enter Executive Session – SC Code 30-4-70(b)

Vote in Public Session

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.

State Specific Purpose

“Specific Purpose” means a description of the matter to be discussed based on a statutory list of acceptable reasons to close public meeting. While “specific purpose” does not require name/identity of person or entity being discussed for personnel or investigative reasons, the stated reason must be more than a generalized catchphrase or announcement. For example, “proposed contractual matter” or “personnel matter” is insufficient. Should provide the public with as much information as possible in the interest of transparency.

“FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private.”

Executive Session - What Can You Do Once There

No action may be taken in executive session except to (a) adjourn or (b) return to public session.

No action that commits the public body to a course of action, to include by polling of members in executive session.

Meeting Minutes – SC Code 30-4-90

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 (closing of meetings).

Public Meeting Documents 30-4-30(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 person making request being required to make a written request to inspect/copy the records when he/she appears in person:

- Minutes of the meetings of the public body for the preceding six months
- 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

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 this requirement provided that the public body also shall produce these documents upon request.



Access and Disclosure of Public Records



Documents that Are Excluded from Definition of Public Records - SC Code 30-4-20(c):

Such records are not considered to be made open to the public under the provisions of this act;

- Medical records
- Scholastic records
- Circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, and
- Other records which by law are required to be closed to the public

Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

Exemptions to Disclosure- SC Code 30-4-40

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

- Trade Secrets
- Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy
- Matters specifically exempted from disclosure by statute or law.
- Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property until contract is entered into, property sold/purchased, or deed executed
- Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.
- 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. Does not include applicant's tax returns, medical records, social security, number, or other exempt information.
- The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a state regulatory agency.

Costs and Fees – SC Code 30-4-30(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.

What Is Process/Timeline?

Receive Written Request

Determination & Notification (Including Anticipated Fees)

- If records are less than 24 months old at the date the request is made, District has ten days (excluding Saturdays, Sundays, and legal public holidays) to notify the person making request of its determination and reasons for decision.
- If records are more than 24 months old at the date the request is made, District has 20 days (excluding Saturdays, Sundays, and legal public holidays) to notify the person making request of its determination and reasons for decision.
- If written notice is not provided within statutory timeframes, “the request must be considered approved as to nonexempt records or information”

Granted Requests No Deposit Required:

- If no deposit required by District, records less than 24 months old must be furnished or made available for inspection/copying no later than 30 calendar days from date on which final determination was provided
- If no deposit required by District, records more than 24 months old must be furnished or made available for inspection/copying no later than 35 calendar days from date on which final determination was provided
- The full amount of the total cost must be paid at the time of production (if the District is seeking costs from requestor).

Granted Requests Deposit Required:

- If deposit required by District, records less than 24 months old must be furnished or made available for inspection/copying no later than 30 calendar days from date on which deposit was received.
- If deposit required by District, records more than 24 months old must be furnished or made available for inspection/copying no later than 35 calendar days from date on which deposit was received.
- The full amount of the total cost must be paid at the time of production (if the District is seeking costs from requestor).