



The information provided here is for informational and educational purposes and current as of the date of publication. The information is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.



South Carolina's Freedom of Information Act

Desiree Fragoso, Field Services Manager





Agenda

1

What is FOIA?


2

Handling Public Record's Requests




3

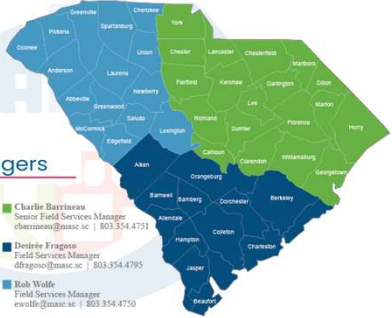
Q&A






Field Services Managers

-  Charlie Barrineau
Senior Field Services Manager
cbarrineau@mausc.sc | 803.354.4731
-  Desiree Fragoso
Field Services Manager
dfragoso@mausc.sc | 803.354.4795
-  Rob Wolfe
Field Services Manager
rwolfe@mausc.sc | 803.354.4750








The Freedom of Information Act


Provides for notices of and access to government meetings


Provides for access to public records

 Municipal Association of South Carolina

FOIA History


- South Carolina adopted Freedom of Information Act in 1987 to provide access to meetings and records of public bodies
- Act has been amended several times, most recently in 2017
- Courts and SC Attorney General's office interpret FOIA provisions, generally in favor of greater transparency


 Municipal Association of South Carolina



What is a Public Record?

"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.


 Municipal Association of South Carolina




What is a Public Body?

"Public body means . . . any public or governmental body or political subdivision of the State, including . . . Municipalities . . . or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known."


YOUR RIGHT TO KNOW ?.....WHAT PUBLIC RECORDS ????



About FOIA Requests

- The public and the press can request a public record in writing under FOIA.
- One can request & receive a public record by electronic transmission. The public body is not required to create an electronic version of the public record.
- Individuals incarcerated are barred from submitting FOIA requests.



Replying to a FOIA Request

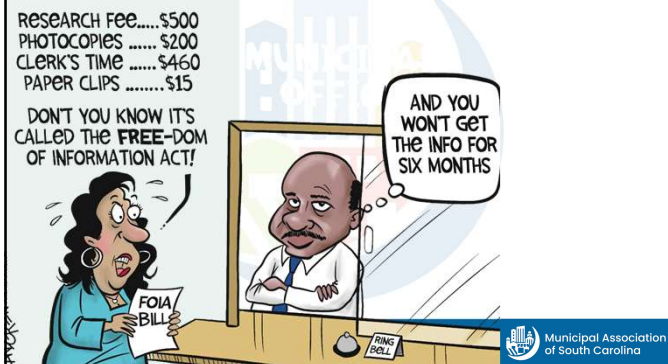
- A public agency has 10 business days to respond to a request of a record less than 2 years old; 20 business days for those over 2 years old
- Requires body to produce requested records within 30 calendar days from when it initially responds that the request will be fulfilled; 35 days for records over 2 years old.
- Request is considered granted if no response is received within the set limits (only for nonexempt records or information)
- Production & response/determination timetables may be extended by mutual consent.

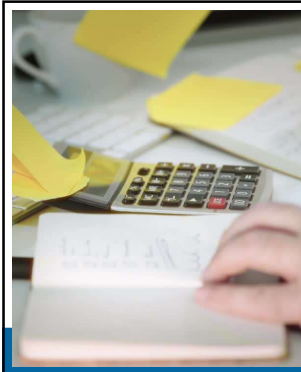


Replying to an FOIA Request (cont'd)

- An entire document isn't secret just because it contains information that can be shielded
- In such cases, the law states that the agency must separate the exempt information and make the non-exempt information public.
- This is usually done by redacting the sensitive information on the copy.
- Public body can seek relief in circuit court from unduly broad, burdensome, vague, repetitive or improper requests.



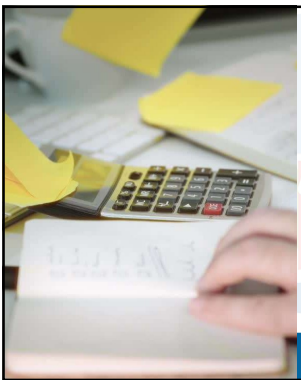




Fees for Providing FOIA Requests

- A public body may establish & collect fees not to exceed the actual cost of searching for and making copies of records. Fees charged must be uniform for copies of the same record.
- Limits a deposit to no more than 25% of the reasonable anticipated cost of reproducing the records
- You're not required to charge for records. The law states that documents "may be furnished when appropriate without charge or at a reduced charge when the agency determines the waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public."

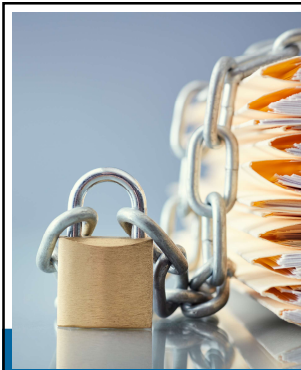




Fees for Providing FOIA Requests

- Copy rates must not exceed the prevailing commercial rate for providing copies.
- Rates charged for searching and retrieving records must not exceed the hourly rate of the lowest paid employee on staff with the skill and training to fulfill the request.
- Copy charges may not apply to records transmitted in an electronic format.





Public Records Exempt from Disclosure

- Trade secrets
- Information of a personal nature which would be an unreasonable invasion of personal property
- Correspondence from an attorney
- Documents concerning proposed contracts or proposed property transactions
- Industrial recruitment documents
- Academic Research
- Tax Standards

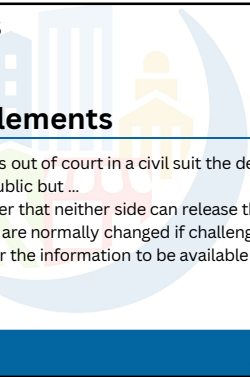




Public Records Exempt from Disclosure: Police Department


- Development of security personnel or devices
- Investigative proceedings regarding allegations of criminal misconduct
- Identity of informants
- Premature release of information to be used in a prospective law enforcement action
- Investigation techniques not known outside of government
- Info endangering the life or property of any person
- Audio or video recordings or other information compiled where production would;
 - 1) interfere with law enforcement proceedings;
 - 2) deprive someone of a right to a fair trial;
 - 3) constitute an unreasonable invasion of privacy; or 4) disclose techniques & procedures for investigations and prosecutions where the disclosure would "risk circumvention of the law."

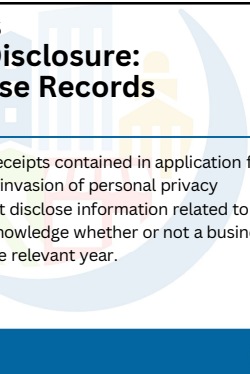
Municipal Association
of South Carolina



Public Records Exempt from Disclosure: Insurance Settlements


- When a public body settles out of court in a civil suit the details of the financial settlement are public but ...
- The judge may sign an order that neither side can release the settlement information. These orders are normally changed if challenged.
- It may take some weeks for the information to be available from the insurance provider.

Municipal Association
of South Carolina



Public Records Exempt from Disclosure: Business License Records

- "Information as to gross receipts contained in application for business licenses" – Unreasonable invasion of personal privacy
- Taxing jurisdiction may not disclose information related to business license tax applications. Only acknowledge whether or not a business has paid a business license tax for the relevant year.

Municipal Association
of South Carolina

Public Records Available Immediately Upon Request

- Minutes of meetings for past 6 months
- Documents produced and distributed to a public body & for review during a public meeting for the past 6 months
- Crime reports, including dashcam videos, for the past 14 days
- Identities of anyone jailed in the previous 3 months



Records Specifically Open

- Information from any account, voucher, or contract dealing with the receipt or expenditure of public funds
- Minutes of any meeting (no written request required)
- Staff manuals & staff instructions that affect the public
- Police reports on the nature & substance of a crime
- Policy statements
- Directory information about employees and officers
- Planning policies & goals





A good filing system will save time and headaches



Personnel and Salary Information

Information about total compensation, not just salary, given to a public employee is open to disclosure within certain limits. (Total compensation may include cars, housing, and other perks)



Quick Guide to Salary Release Law

Total compensation must be released under the following guidelines:

- For over \$50K: Exact compensation.
- For \$30,001 to \$50K: within \$4 K ranges beginning at \$30K
- For \$30K or less: Pay range (with longevity steps) for classified employees; within \$4K for others
- Department heads, part-time employees & honorarium: exact amount



Job Candidates

Materials gathered by a public body during a job search are shielded except:

- The number of applicants must be released
- Materials relating to not fewer than the final 3 applicants under consideration
- Highly personal information such as Social Security numbers, tax, and medical information can be withheld
- If the total pool of applicants is the group from which the selection is made, it can be argued that all of the applications are open to the public



Dealing with Burdensome or Improper Requests

A public body may file a request for a hearing in circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or improper requests.

Allows the public body to request a hearing if it is unable to make a good faith determination regarding information's exemption from disclosure.



Decisions by the Circuit Court



- The court can order equitable relief, actual or compensatory damages, or reasonable attorney's fees & costs to the prevailing party.
- Creates a good faith finding if the court determines that the requested records are not subject to disclosure. This protects the public body from paying attorney's fees and costs if the initial court ruling is overturned on appeal.
- Eliminates the violation of FOIA as a crime punishable by jail time. It could charge a \$500 fine if the violation was found to be arbitrary & capricious.



Use of Information for Commercial Solicitation

- No one shall knowingly obtain or use personal information from a public body for commercial solicitation
- Public bodies shall provide a notice to all those requesting records that obtaining or using public records for commercial solicitation is prohibited.
- Public bodies shall take reasonable measures to ensure that no one obtains or distributes personal information obtained from a public record for commercial solicitation.
- Anyone knowingly violating this is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed \$500 or 30 days in jail, or both.








Executive Session


- Section 30-4-70 (a) (1) – “Personnel Matters”
- Section 30-4-70 (a) (2) – “Contractual, Real Estate & Legal Matters”
- Section 30-4-70 (a) (3) – “Security Matters”
- Section 30-4-70 (a) (4) – “Investigative Matters”
- Section 30-4-70 (a) (5) – “Economic Development Matters”




Helpful Tips

- Calculate the deadline for a written response: 10 "working" days, excluding weekends and holidays, between the arrival date and the deadline for a reply.
- Check to see if the information sought is available online. If so, notify requestor.
- Check to see if the request is for copies of documents or for an opportunity to inspect documents or receive them electronically. The public and news media are entitled to all.
- Determine whether there will be costs other than those for simple copying. You may charge a fee not to exceed the actual cost for search, retrieval, redaction and copying. Copies may not exceed the prevailing commercial rate. Keep in mind that costs can be waived if the information is in the "public interest" to release. Many citizen and news media requests fall into this classification.
- Notify in writing the requesting party that the request has been received and give a reasonable timetable for your response, normally not to exceed 30 days. Include information about costs, including deposit, if any. Try not to wait the maximum time limit. Some public bodies tend to delay as long as possible, but this runs contrary to the intent of the law and doesn't help your relationships with the public or press.
- Try to determine the best way to make the requested information available. In other words, a phone conversation with the requesting party might be in order.

Invest a little effort in being cordial. It'll be time well-spent.

Municipal Association of South Carolina




Resources

Municipal Association of South Carolina
803.799.9574
www.masc.sc

S. C. Press Association
803.750.9561
www.scpres.org

Freedom of Information Act
Title 30, Chapter 4
SC Code of Laws

Municipal Association of South Carolina



QUESTIONS?

Municipal Association of South Carolina
