



Do's & Don'ts of FOIA for Elected Officials

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DO

Communicate with Each Other

- Use emails to share information, ensuring that all members receive the same information at the same time.
- Be aware that text messages may be public records under FOIA.



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DON'T

Accidentally or Intentionally Circumvent FOIA

- Group emails, text messages, social media, or other means can quickly violate FOIA by circumventing public meeting rules (AG Opinion Feb. 18, 2021)



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DO

Be Aware of Public Perception

- Council members are allowed to socialize, but should be aware of public perception of such meetings (AG Opinion July 28, 2025).
- Councils are encouraged to post notice of quorums or gatherings whenever practicable.



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DO

Use Executive Sessions Correctly

- Be careful how you handle materials in executive session
 - Material distributed and notes made in executive session are not automatically exempt from disclosure
- Enter only for authorized reasons and state the specific reason for the record (Laurens County Residents ... v Laurens County)
- Stay on topic



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DON'T

Overuse Executive Session

- Only use when it's necessary and legally authorized
- Public trust considerations, perception of lack of transparency, media and public criticism
- Increased risk of legal challenges if discussions exceed stated purpose
- Take official action other than adjourn or return to public session, or commit to a course of action by polling members (Miramonti v Richland County School District One)



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DON'T

Make Elected Officials Request Information Through FOIA Request

- *Anderson County v. Preston*
 - Elected officials have a right to information. Council or staff may determine how to prioritize fulfilling request



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DO

Invest in Publishing Information on the Town's Website

- Be proactive and post commonly sought after public information on the city's website: agendas, minutes, ordinances, resolutions, budget, financial reports, etc.
- Increase transparency, accountability
- Free website services through Palmetto SiteBuilder <https://psbtraining.sc.gov/>



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DO

Adopt a FOIA Fee Schedule

- Ordinance or Resolution?
- Cities and towns may charge for FOIA requests, but they do not have to do so.
- Charge for time spent searching, retrieving and redacting documents. Charge cannot exceed the hourly rate of lowest-paid employee who has skills to fulfill request.
- Deposit can't exceed 25% of estimated costs



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DO

Develop an Internal Policy for Handling FOIA Requests

- Designate staff person who has final authority over requests
- Date stamp requests upon receipt
- Acknowledge request, indicate whether records are available and if there is a cost
- Monitor response timelines
- Develop internal deadline for production of documents
- Does it require legal review?



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DON'T

Destroy Records, Delay Production of Records, Ignore Deadlines

- Don't delete or destroy public records subject to FOIA
- Delays can damage public trust and create appearance that municipality is withholding information
- Missing deadlines can expose municipality to complaints, court orders, legal expenses



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DON'T

Reveal Information Obtained in Executive Session

- Not illegal in South Carolina, but disclosure can create significant risks such as waiving attorney-client privilege and can weaken municipality's negotiation position in real estate, economic development matters or pending litigation
- "Wilson, as a council member, cannot independently review attorney-client privileged documents. The privilege belongs to the client County; and the Council, as a whole, is authorized to release that information and has to waive the privilege before an individual council member can review privileged documents."
Wilson v. Preston, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008)



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