

# S.C. DEPARTMENT OF NATURAL RESOURCES

## Overview of S.C. Freedom of Information Act

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# Freedom of Information Act (FOIA)

- This Act was passed in order to promote transparency within public bodies.
- Public bodies include:
  - Government agencies, departments, and commissions
  - State subdivisions such as cities, counties, and school districts
  - Organizations, corporations, and agencies supported in whole or in part by public funds including quasi-governmental bodies
  - “including committees, subcommittees, advisory committees, and the like of any such body by whatever name known”



SECTION 30-4-20 (a) of S.C. Code of Laws

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# How FOIA Promotes Transparency

There are two main methods through which FOIA promotes governmental transparency:

- 1) Open meetings of public bodies
- 2) Access to documents owned by public bodies



SECTION 30-4-60 and SECTION 30-4-30 of S.C. Code of Laws

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# Open Meetings of Public Bodies

- A meeting of a public body is open to the public so long as there is a majority of the public body's membership present at the meeting.
- There are a few reasons a public body may enter into an executive session during which the public is excluded.
  - Prior to entering an executive session, the public body must publicly vote on whether or not to enter, and if it votes to enter, it must specifically state its reason.
  - While in executive session, the public body may not take any action except to adjourn or to return to public session.



**SECTION 30-4-15, SECTION 30-4-20 (d) and (e) and SECTION 30-4-70 (b) of S.C. Code of Laws**

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# Five reasons allowing a public body to hold an executive session

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.
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.
3. Discussion regarding the development of security personnel or devices.
4. Investigative proceedings regarding allegations of criminal misconduct.
5. Discussion of matters relating to the 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.

\*SECTION 30-4-70 (a) 1-5 of S.C. Code of Laws



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# Protocol for Posting Agendas of Meetings

- **Posting agendas:** Agendas for any called, special, or rescheduled meetings (except for emergency 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 24 hours prior to such meetings.
- The 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 notice requirement on the website will include any workshops.

\*SECTION 30-4-80 (A) of S.C. Code of Laws



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# Protocol for Amending Agendas

- **Amending agendas:** Once an agenda for a regular, called, special, or rescheduled meeting is posted, no items may be added to the agenda without an additional 24 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 may only be added to the agenda by a two-thirds vote of the members present and voting.
- **This means that any item which the public body is making a motion to approve must be an already established agenda item. However, an item can be added to the agenda at the meeting and final action can be taken only 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.**
- An example of an exigent circumstance would be if the public body has to approve a matter in order to meet a deadline for a grant qualification. If this item was not on the posted agenda and if the public body does not amend the agenda to address this matter, the public body will lose the opportunity to obtain the grant. Then, the public body could amend the agenda by the two-thirds vote explaining why there were exigent circumstances, then vote on the item.

\*SECTION 30-4-80 (A) of S.C. Code of Laws



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# Public Access to Documents Owned by Public Bodies

- Any person has a right to inspect or copy any public record of a public body subject to a few limitations.
- To do so, a person must submit, in writing, a request for the document they wish to inspect or copy.
- Once a public body receives a FOIA request, the public body must respond to the request within 10 days (excluding weekends and public holidays) confirming that the request will be fulfilled or explaining why the document requested cannot be released (unless info over 24 months old, then 20 days)
- If no response is given within the 10-day period then the request is automatically considered approved.
- Public bodies have the right to charge a fee to produce records, so long as the fee does not exceed the cost of searching for and making copies of said records.

\*SECTION 30-4-30 (a) (b) (c) of S.C. Code of Laws



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# Documents Owned by Public Bodies Exempt from Disclosure

The following information includes a portion of the items exempt from disclosure:

- Trade secrets
- Information that would constitute an unreasonable invasion of personal privacy.
- Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.
- Matters specifically exempted from disclosure by statute or law.

\*SECTION 30-4-40 of S.C. Code of Laws for a comprehensive list of matter exempt from disclosure



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# Penalties for Violating FOIA

## Criminal Penalties

- Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined:
- First offense:
  - Fine of not more than \$100 or imprisoned for not more than thirty days
- Second offense:
  - Fine of not more than \$200 or imprisoned for not more than sixty days
- Third offense:
  - Fine of not more than \$300 or imprisoned for not more than ninety days for the third or subsequent offense.

## Civil Penalties

- Violating FOIA can also cause a public body to incur civil charges in which it may have to reimburse the attorney's fees of the party which suffered from said violation.



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\*SECTION 30-4-110 of S.C. Code of Laws

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# For more information on FOIA

- The complete statute can be found in the S.C. Code of Laws Title 30, Chapter 4 at <http://www.scstatehouse.gov/code/t30c004.php>
- Additionally, the Public Official's Guide to Compliance with South Carolina's Freedom of Information Act can be found at <http://scpress.org/Documents/FOIBook1115.pdf>



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# Questions?



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