

A Citizen's Guide to South Carolina's Freedom of Information Act

South Carolina's Freedom of Information Act (FOIA) makes records and meetings of public bodies open and available to citizens and their representatives in the press. This openness is important because it allows the public to learn about the performance of public officials and the expenditure of public funds.

As a citizen of South Carolina, you have the right to attend meetings of commissions, councils, boards and other public bodies. You have a right to see and copy records of public bodies. A record cannot be withheld and a meeting cannot be closed unless a specific exemption applies. The FOIA -- also known as the Sunshine Law because it shines light on government meetings and records -- is essential to our democratic form of government.

Many people think the FOIA is too hard to use or costly, or that it takes forever to get the information that you are seeking. We hope this guide will break down the FOIA into an easy-to-understand summary with answers to frequently asked questions.

Who or what is covered by the FOIA?

A "public body" is any entity supported by public funds, even in part, or that expends public funds. Public bodies include state and local agencies, school boards and city councils. Committee and subcommittee meetings are included. Even non-profit agencies and chambers of commerce that receive public funds are subject to the FOIA. Federal agencies are not covered by state law and have their own FOIA. South Carolina's FOIA starts with the presumption that all public body records and meetings are open and available to the public. A record cannot be withheld and a meeting cannot be closed unless a specific exemption or some other state law applies. Just because an exemption could apply, however, doesn't mean it must. A public body may claim an exemption, but is not required to do so. If claimed, an exemption must be interpreted narrowly to increase awareness of all citizens of public activities.

PUBLIC RECORDS

The law says public records include all books, papers, maps, photographs, cards, tapes, recordings, or other documentary material regardless of physical form or characteristics that is prepared, owned, used, in the possession of, or retained by a public body. This includes electronic records such as emails. The FOIA does not require a public body to create a record that doesn't already exist. If part of a document can legally be shielded from release, that doesn't mean the entire document may be withheld. The agency must separate the exempt data and release the rest of it (this usually means taking a marker and blacking out some information).

Do I have to file a formal FOI request to get information?

Before filing a formal FOI request, you may want to call or visit the public body and just ask for the information you're seeking. A formal FOI request may not be needed.

How do I file an FOI request?

There is no required form, but your FOI request must be in writing. Just ask for what you want and mention the words Freedom of Information Act. Mail, email, fax or deliver it to the public body. Be specific in what you ask for. For a sample FOI request, visit: <http://www.scpres.org/foia.html>.

How much can a public body charge me for providing the records?

A public body may charge for searching, retrieving, redacting and copying records. Charging is not mandatory. The law requires public bodies to develop and post online a schedule of the fees for fulfilling FOIA requests. Production fees should be based on the hourly wage of the lowest paid staff employee who has the skills and training to fulfill the request. The law limits the copy rate to not exceed the prevailing commercial rate for making copies (rate charged by local commercial copiers like Staples). Copy charges may not apply for records transmitted electronically. The law states that records must be furnished at the lowest possible cost and in a convenient and practical form. The law limits deposits, if any, to no more than 25% of the reasonably anticipated cost for gathering and reproducing the records.

How long will it take to get a response?

Public bodies must respond to a written FOIA request in a timely fashion but no longer than 10 business days unless the requested record is more than 24 months old, in which case the deadline is 20 business days. If no response is received within the set limits, the request must be considered granted for nonexempt records or information.

How long will it take to get the records?

The law requires the public body to produce the requested records within 30 calendar days from the date it initially responds that the request will be fulfilled. When the public body requires a deposit, it must produce the records within 30 days of receiving the deposit. That deadline is 35 days for records that are more than two years old.

What kinds of records are not required to be disclosed under the FOIA?

Public bodies in the Palmetto State are able to withhold certain specific records. Exemptions are discretionary, and these exemptions must be interpreted narrowly to increase awareness of all citizens of government activities. Exemptions include:

- Highly personal information such as Social Security numbers
- Trade secrets of public bodies and tax standards used by the Department of Revenue
- Legal correspondence violating attorney-client privilege
- Certain police records that would harm the agency's efforts in a specific case
- Contract documents until the contract is completed, including the sale of property
- Industrial development offers until the offer is accepted and announced

Is certain information specified as open to the public without question?

Yes. Most importantly, any information taken from an account, voucher or contract dealing with the receipt or expenditure of public funds is specified in the law as open. Also specified as open are names of employees, staff manuals and instructions, minutes of meetings and law enforcement reports on crimes.

Are salaries public information?

Yes, with certain limits. The FOIA requires release of exact salaries of public employees who make \$50,000 or more. Below that, salaries must be released in \$4,000 ranges.

PUBLIC MEETINGS

The law says a public meeting is a gathering of a quorum (simple majority) of a public body, either in person or by telephone or computer, to discuss or act upon public business. Work sessions, ad hoc committees, retreats, and subcommittee and committee meetings are covered by the law. All meetings of public bodies are open and public notice of the meetings must be given 24 hours in advance.

Who can attend a public meeting?

The public has a right to attend and record or film meetings, work sessions and retreats of all public bodies unless closed for limited and specific reasons.

How do I know when a public body is meeting?

Before the public can attend a meeting, it has to know about it. The FOIA requires public bodies to announce the schedule of regular meetings at the first of each year, and agendas must be available at least 24 hours before the scheduled meeting. Usually notice is also published in the local newspaper and posted at the place of the meeting. For emergency meetings, meeting notices must be in writing and 24 hour notice is not required. Agendas can be amended within 24 hours with a 2/3rds vote. If a final action is added, and there is no chance for public comment, a finding of an emergency or exigent circumstance is required.

Where can I find meeting minutes and what should they include?

Public bodies must take minutes at the meeting. Minutes are considered public records. Though minutes don't have to be in a specific format, they must, at a minimum, include the date, time and location of the meeting, which members of the public body were there and which ones weren't, a summary of the discussions and a record of any votes taken. Minutes of meetings held in the previous six months must be made available to the public without a written request during the public body or agency's business hours.

When can a public body close its meeting to the public?

All public business should be performed in an open and public manner. However, there are certain exemptions in the FOIA that a public body may use to go into a closed meeting. Exemptions include:

- discussions of the hiring, firing, promotion or discipline of an employee or student
- discussion of contract negotiations, including the sale of property
- receipt of legal advice (Public bodies may receive legal advice behind closed doors when it relates to a pending claim, the position of the public body in an adversarial matter or any matter covered by attorney client privilege. Such exemptions are put in the law to provide shelter when necessary. Having an attorney present is not a carte blanche excuse for secrecy.)
- discussion of security personnel or devices
- discussions that may lead to criminal prosecution
- discussion of industrial recruitment/economic development

When can a public body go into a closed meeting?

Before a public body may go into a closed meeting (also known as Executive Session), it must approve a motion in open session, stating the purpose of the closed meeting and identifying the specific exemption that covers the topic. A general reference such as "personnel matters" is not sufficient. The members of the body must vote on the motion.

Can a public body vote in a closed meeting?

No votes or actions may be taken in the closed session. All votes must be made in front of the public.

Can I record a meeting?

Public meetings, except for executive sessions, may be recorded or filmed, provided you don't interfere with the meeting.

MORE INFORMATION

If your FOIA request is denied or you get no response, or if a public meeting is closed illegally, where do you go?

If you feel you've been wrongfully denied a public record, if a public body doesn't respond to your request for records, or if you think the notice for a meeting or the topic of a meeting was improper, there are a few things you can do. For starters, ask to speak to a supervisor or the agency head. Show them the law. If an amicable solution cannot be reached, a lawsuit is an option.

Where can I go to find out more about the FOIA?

For a copy of the FOIA and more information, visit <http://scpress.org/foia.html>.