

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. Mail, 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 only the actual cost of gathering and copying records in response to your request. Records must be furnished at the lowest possible cost and in a convenient and practical form. The agency may require a deposit. A reasonable cost is 10 to 25-cents a page. If you are quoted more than that, ask for a detailed explanation of the charges and challenge excessive costs with the agency head or governing body.

How long will it take to get a response?

No exact deadline is specified by the law, but the law requires a timely response. When the public body gets your FOI request, it has 15 working days to respond as to whether it will comply or claim an exemption. You should usually get your records within 15 working days, but the agency has a reasonable time after its response to collect and provide your data if needed. If any part of the record is to be withheld, the agency must tell you exactly which FOIA exemption justifies the denial. If the public body does not respond at all within the allotted 15 days, the FOI request is considered granted.

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

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 if there is an agenda, to make it 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, at least some notice of time, place and agenda must still be given.

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 business 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 make 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. Anyone can file a suit in circuit court asking it to determine whether an FOIA violation has occurred. The statute of limitations for this is one year. An attorney is not necessary to file suit but your chances of success are improved with an attorney, and, if you win, you may be able to recoup your attorneys' fees and costs.

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>. The Reporters Committee for Freedom of the Press also has a state-by-state guide that has detailed information on each state's FOIA. The South Carolina section, written by SCPA Attorney Jay Bender, is available here: <http://www.rcfp.org/south-carolina-open-government-guide>.

Our federal government also has an FOIA. For more information on open government at the federal level, visit <http://www.rcfp.org/federal-open-government-guide>.