

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

SOUTH CAROLINA

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE
OPEN RECORDS AND MEETINGS LAWS IN
SOUTH CAROLINA

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SOUTH CAROLINA

**SIXTH EDITION
2011**

Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

South Carolina first adopted a freedom of information act to provide access to the meetings and records of governmental institutions in 1974. The first significant Supreme Court test for the act revealed substantial weaknesses in the law resulting in a major revision in 1978. Between 1978 and 1987 the South Carolina Press Association saw the need for further revisions in the legislation, particularly in the provision which allowed governmental bodies to create their own exemptions from the open records requirements and the provision which allowed votes in closed sessions of the meetings of governmental bodies. At the time the press group was seeking an overhaul of the law the president of the University of South Carolina became embroiled in a very public controversy regarding the expenditure of University funds apparently without oversight or documentation. As a consequence of the groundswell of public pressure, the legislature adopted major revisions proposed by the association. The law is followed reasonably well by state agencies and bodies, but the political culture of local government bodies, particularly school boards and city and county councils, seems to stimulate noncompliance. The South Carolina Supreme Court has been decidedly in favor of open records and meetings since its earliest decisions. This trend is expected to continue as the Chief Justice of that court was the author of the 1978 act and a principal sponsor of the 1987 revisions while she served in the legislature.

Open Records**I. STATUTE — BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

“Any person has a right to inspect or copy any public record.” S.C. Code Ann. § 30-4-30(a). “Person” is defined to include individuals and entities. S.C. Code Ann. § 30-4-20(b).

2. Purpose of request.

A person requesting records relating to the registration and licensing of motor vehicles must state the reason for the request. S.C. Code Ann. § 56-3-510. No other request for access to public records requires an express statement of purpose, but prohibitions on the use of certain information contained in public records may imply that a public body may ask the requester to state the intended use of the records. The South Carolina Family Privacy Protection Act of 2002, S.C. Code Ann. §§ 30-2-10 *et seq.* prohibits the use of state-collected personal information for commercial solicitation thereby implying that the purpose of the request may be ascertained by the government. Local government records are not subject to the state privacy legislation. S.C. Code Ann. § 3-2-50(E).

3. Use of records.

The name, address and telephone number of persons who are handicapped or disabled are not to be disclosed “when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap.” S.C. Code Ann. § 30-4-40(a)(2). Information revealed in a police incident report or an employee salary schedule as well as the home addresses and home telephone numbers of public employees may not be used for commercial solicitation. S.C. Code Ann. § 30-4-50(B). Personal information in the possession of a state (as distinguished from a local government) agency may not be used for commercial solicitation. S.C. Code Ann. § 30-2-50.

B. Whose records are and are not subject to the act?**1. Executive branch.**

Executive branch records are available for inspection and copying subject to exemptions applicable to all public records.

a. Records of the executives themselves.

Records of executives are available if the records come within the definition of public records contained in S.C. Code Ann. § 30-4-20(c).

b. Records of certain but not all functions.

Availability is determined by the definition of public record and the exemptions to mandatory disclosure, and not by specific function.

2. Legislative bodies.

“Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs” are exempt from disclosure, but the exemption is not to be construed to limit public access to “source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information . . . and not specifically exempted by any other provisions.” S.C. Code Ann. § 30-4-40(a)(1). Other than this “working papers” exception, other records of the General Assembly are subject to the same provisions as other public records.

3. Courts.

The Chief Justice of the Supreme Court of South Carolina is the administrative head of the state’s court system. The administrative

arm of the court, including the South Carolina Bar, is subject to the act. Access to court proceedings and records has been sought and secured under state and federal constitutional provisions rather than the act. *See, e.g., Ex parte Hearst-Argyle Television, Inc.*, 631 S.E.2d 86 (S.C. 2006); *In Ex parte The Island Packet*, 417 S.E.2d 575 (S.C. 1992).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

A body supported in whole or in part by public funds or one that expends public funds is subject to the act. S.C. Code Ann. § 30-4-20(a); *Weston v. Carolina Research and Development Found.*, 401 S.E.2d 161 (S.C. 1991). A business does not become subject to the act by the receipt of public funds if the public funds are given in exchange for identifiable goods or services. *Id.*

b. Bodies whose members include governmental officials.

A nongovernmental group would not become subject to the act merely because its members include governmental officials unless the group received public funds as an appropriation and not in exchange for goods or services incident to an arms-length transaction. *Weston v. Carolina Research and Development Found.*, 401 S.E.2d 161 (S.C. 1991).

5. Multi-state or regional bodies.

A multistate or regional body would become subject to the act if it were supported in whole or in part by public funds or expended public funds that were received other than in exchange for identifiable goods or services. *Weston v. Carolina Research and Development Found.*, 401 S.E.2d 161 (S.C. 1991).

6. Advisory boards and commissions, quasi-governmental entities.

All departments of the state or political subdivision of the state including boards and commissions and quasi-governmental bodies are subject to the act. S.C. Code Ann. §30-4-20(a) (1991). The Supreme Court of South Carolina applied this section to hold that a committee appointed by a city manager to review proposals for a city contract was a “public body” and subject to the FOIA. *Quality Towing Inc. v. City of Myrtle Beach*, 547 S.E.2d 862 (S.C. 2001).

C. What records are and are not subject to the act?

1. What kind of records are covered?

Records “prepared, owned, used, in the possession of or retained by a public body” are subject to the act with the exception of income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, library circulation records which reveal the identity of a person using library material and applications for bank charters. S.C. Code Ann. §30-4-20(c). Under the federal Driver’s Privacy Protection Act, 18 U.S.C. §§ 2721-2725, the nonconsensual disclosure of certain personally identifying information contained in motor vehicle records is prohibited. South Carolina’s Attorney General challenged the legislation on Tenth Amendment grounds, but the Act was upheld by the United States Supreme Court, reversing both the District Court and the Fourth Circuit. *Condon v. Reno*, 528 U.S. 141 (2000). Other statutes may contain specific exemptions from disclosure, *e.g.*, autopsy photographs are exempt from disclosure to the public under the provisions of S.C. Code Ann. §§17-5-535 and 30-4-40(18).

2. What physical form of records are covered?

Records as defined in the act are subject to the act “regardless of physical form or characteristics.” S.C. Code Ann. § 30-4-20(c). Local governments are attempting to make a distinction between “records” and “data” in an effort to limit public access to tax map and other property information maintained as a part of a “geographic information system” or GIS. The Supreme Court of South Carolina has au-

thorized public bodies to obtain copyrights and restrict commercial use of “specially-created data” indicating that data are public records subject to the Act. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

3. Are certain records available for inspection but not copying?

Any person has a right to inspect or copy any public record not exempt from disclosure under the act. S.C. Code Ann. § 30-4-30(a).

D. Fee provisions or practices.

1. Levels or limitations on fees.

Fees may be collected for searching for and making copies of records. The fees may not exceed the actual cost of searching for or copying records. Fees must be uniform and the records must be furnished at the lowest possible cost. Records may be furnished at no cost or at a reduced cost where the agency determines that a reduction or waiver of the cost is in the public interest. S.C. Code Ann. § 30-4-30(b).

2. Particular fee specifications or provisions.

a. Search.

A public body may charge for searching for a public record, but it may not charge to review a document to see if it is subject to disclosure. S.C. Code Ann. § 30-4-30(b).

b. Duplication.

A public body may charge for copying a public record. S.C. Code Ann, but the charge is not to exceed the actual cost of copying. S.C. Code Ann. § 30-4-30(b).

3. Provisions for fee waivers.

A public body may waive or reduce a fee for searching for and making copies of documents if furnishing the information can be considered as primarily benefiting the general public. S.C. Code Ann. § 30-4-30(b).

4. Requirements or prohibitions regarding advance payment.

A public body may require a reasonable deposit against the cost of producing or copying records. S.C. Code Ann. § 30-4-30(b).

5. Have agencies imposed prohibitive fees to discourage requesters?

Agencies have on occasion sought to inhibit requests by requiring excessive advance deposits, but most of the situations have been resolved when the requester demands an itemized statement of the proposed charges. In many instances requesters (including news reporters who should know better) submit broad requests for copies without first examining the material to see if any of the documents are worth copying. The author of this outline always recommends that requesters seek to review public records and then copy only those desired. This technique is cheaper and has the added benefit of allowing the requester to look at the documents before they have been copied. It is not unknown for some significant material to escape copying when the requester relies on the agency to interpret the request and make copies without the original documents having been reviewed by the requester.

E. Who enforces the act?

South Carolina in practice relies on private, civil enforcement in suits seeking declaratory judgments and injunctive relief. S.C. Code Ann. § 30-4-100. Criminal prosecution is provided for in the Act, with the one prosecution under the Act resulting in not guilty verdicts for the commissioners of a fire district in 2011. S.C. Code Ann. § 30-4-110.

1. Attorney General's role.

The South Carolina Attorney General's office has consistently issued opinions in favor of open government and has participated with the South Carolina Press Association in the publication of a guide for public official compliance with the law.

2. Availability of an ombudsman.

None.

3. Commission or agency enforcement.

None.

F. Are there sanctions for noncompliance?

A willful violation is a misdemeanor and subject to escalating fines and possible imprisonment for repeat offenses, S.C. Code Ann. § 30-4-110, but the sole prosecution under the Act resulted in not guilty verdicts for defendants who testified they had violated the open meetings provisions without know their actions were illegal.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

Exemptions are found in two places in the Act. Some records that would otherwise be included within the definition of a "public record" have been excluded from the statutory definition so as to put them beyond the reach of the statute. The records range from library patron information to security plans. S.C. Code Ann. § 30-4-20(c).

1. Character of exemptions.

a. General or specific?

Exemptions under the Act are specific. S.C. Code Ann. § 30-4-40.

b. Mandatory or discretionary?

Exemptions are discretionary with the public body, and the public body may release a document that is subject to an exemption. The Act provides, "A public body may but is not required to exempt from disclosure the following information . . ." S.C. Code Ann. § 30-4-40(a). This language was added after the Supreme Court decision in *S.C. Tax Comm'n v. Gaston Copper Recycling Corp.*, 447 S.E.2d 843 (S.C. 1994); 22 Media L. Rep. 2211, and is consistent with the decision.

c. Patterned after federal Freedom of Information Act?

Exemptions are patterned roughly after the federal act.

2. Discussion of each exemption.

a. Trade secrets defined as unpatented, secret, commercially valuable plans, appliances or processes including plans of public bodies who market services or products. S.C. Code Ann. § 30-4-40(a)(1). The South Carolina Court of Appeals rejected an effort by a public body to apply a broader definition of trade secret than the statute allowed to shelter records relating to financial transactions. *Campbell v. Marion County Hosp. Dist.*, 580 S.E.2d 163 (S.C. App. 2003)

b. Information of a personal nature where the public disclosure of the information would constitute an unreasonable invasion of personal privacy. Specifically exempts financial information in business license tax applications and information relating to handicap or disability where the information would be used for person-to-person commercial solicitation. S.C. Code Ann. § 30-4-40(a)(2). The South Carolina Supreme Court and the Court of Appeals have ruled that this exemption does not relate to the performance of a public duty, and records relating to public activity must be disclosed. *Society of Professional Journalists v. Sexton*, 324 S.E.2d 313 (S.C.1984); *Burton v. York County Sheriff*, 594 S.E.2d 888 (S.C. App. 2004)

c. Records of law enforcement and public safety agencies compiled in the process of detecting and investigating crime where the public

disclosure would harm the agency by disclosing the identity of informants, compromise a prospective law enforcement action, disclose investigatory techniques not known outside the government, or that would endanger the life, health or property of any person. S.C. Code Ann. § 30-4-40(3); *Newberry Pub. Co. v. Newberry County Comm'n. on Alcohol and Drug Abuse*, 417 S.E.2d 870 (S.C. 1992); 20 Media L. Rep. 1420. The Supreme Court of South Carolina has held that the law enforcement agency must prove specific harm to the agency to invoke this exemption. *Evening Post Pub. Co. v. City of N. Charleston*, 611 S.E.2d 496 (S.C. 2005).

d. Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property. These documents become subject to mandatory disclosure once a contract is entered into or the property is sold or purchased. A contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed or 12 months have passed from the date of sale or purchase. S.C. Code Ann. § 30-4-40(5).

e. The amount of compensation paid by public bodies except for those persons receiving compensation of fifty thousand dollars or more annually, all part-time employees, persons paid honoraria and agency or department heads whose exact compensation shall be public. The compensation of all others is subject to disclosure within specified ranges. S.C. Code Ann. § 30-4-40(6).

f. Correspondence or work product of legal counsel for a public body or other material subject to the attorney-client privilege. S.C. Code Ann. § 30-4-40(7).

g. Memoranda, correspondence and working papers of members of the legislature and their staff members. S.C. Code Ann. § 30-4-40(8).

h. Memoranda, correspondence, documents, and working papers relative to efforts of a public body to attract business or industry to invest within the state. S.C. Code Ann. § 30-4-49(9), but the exemption expires if an offer is accepted or a project announced.

i. Standards used or to be used by the S.C. Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards if the commission determines that the disclosure would impair enforcement of the tax laws. S.C. Code Ann. § 30-4-40(10).

j. Information relative to the identity of a donor of a gift to a public body if the donor requests anonymity. If the maker of the gift or any member of his immediate family has any business transaction with the recipient of the gift within three years prior to or following the gift, the identity of the donor is not exempt from disclosure. S.C. Code Ann. § 30-4-40(11).

k. Records relating to plans for investing state pension funds. S.C. Code Ann. § 30-4-40(12).

l. Material gathered in a search to fill an employment position except that the material gathered relative to "not fewer than the final three applicants under consideration" is to be made public. S.C. Code Ann. § 30-4-40(13). The Supreme Court of South Carolina rejected a school district's claim that it was required to release the collected information only as to its two "finalists." *New York Times Co. v. Spartanburg County School Dist. No. 7*, 649 S.E.2d 28 (S.C. 2007).

m. Records and data relating to commercially valuable research produced or collected by faculty or staff of state institutions of higher learning where the information has not been publicly released, published, copyrighted or patented. S.C. Code Ann. § 30-4-40(14).

n. The identity or information tending to reveal the identity of a complainant or informant to a state regulatory agency. S.C. Code Ann. § 30-4-40(15).

o. Records relating to investment strategy for endowments of state institutions of higher learning. S.C. Code Ann. § 30-4-40(16).

p. Structural plans for bridges. S.C. Code Ann. § 30-4-40(17) (Terrorist inspired).

q. Autopsy photographs or videos. S.C. Code Ann. § 30-4-40(18) (Dale Earnhardt inspired).

r. In response to terrorism-related concerns, a new section exempted from public disclosure information concerning safeguards and off-site consequence analyses for facilities containing materials or operations that posed threats to persons or the environment. S.C. Code Ann. § 30-4-45.

B. Other statutory exclusions.

1. *Income tax return information.* The amount of income or other information revealed in a return or report is not to be disclosed. S.C. Code Ann. § 12-7-1680.

2. *Agent Orange medical information.* The identity of a veteran providing medical information to the S.C. Agent Orange Advisory Committee regarding exposure to chemical agents is confidential. S.C. Code Ann. § 44-40-50(B).

3. *Business information provided to State Crop Pest Commission.* S.C. Code Ann. § 46-9-30.

4. *Child abuse and neglect reports.* Reports made and information collected by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential. S.C. Code Ann. § 20-7-690(A).

5. *Cooperative association reports.* Annual reports by cooperative associations to the Commissioner of Agriculture are confidential. S.C. Code Ann. § 33-45-190.

6. *Crime victim's compensation fund records.* The records of the S.C. Crime Victim's Compensation Fund are exempt from the Freedom of Information Act. S.C. Code Ann. § 16-3-1240.

7. *Controlled substance research subject.* The names and other identifying characteristics of persons who are the subjects of research on the effects of controlled substances may be withheld. S.C. Code Ann. § 44-53-290(g).

8. *Forest products production reports.* Reports by forest products producers for assessment purposes are not to become part of the public record. S.C. Code Ann. § 48-30-70.

9. *Patient-identifying information obtained by health agency.* The state Department of Health and Environmental Control has the authority to obtain access to medical records and information in the possession of hospitals, physicians and registries, but the patient-identifying information contained in such records is not subject to disclosure. S.C. Code Ann. § 44-1-110 and 44-20-340.

10. *Records of state mental health patients.* Records of patients receiving treatment in state mental health facilities are confidential. S.C. Code Ann. § 44-22-100.

11. *Records of infants and toddlers with disabilities.* Records obtained by the Interagency Coordinating Council under the Infants and Toddlers with Disabilities Act are confidential. S.C. Code Ann. § 44-7-2590.

12. *Vulnerable adult abuse records.* Agencies investigating complaints of abuse or neglect of vulnerable adults are not to publicly disclose information contained in investigative files. S.C. Code Ann. § 43-35-60.

13. *Sexually transmitted diseases.* Records and information held by the state health agency relating to known or suspected sexually transmitted diseases are confidential. S.C. Code Ann. § 44-29-135.

14. *Birth and death certificates.* Birth certificates are available only to the person, a parent, guardian or legal representative. S.C. Code Ann. § 44-63-80. For the first fifty years following a death, a death certificate may be released only to the deceased's immediate family,

legal representative or other persons demonstrating a need to establish a personal or property right. S.C. Code Ann. § 44-63-84.

15. *Criminal pretrial intervention records.* Information regarding the identity of an applicant for participation in a criminal pretrial intervention program may not be released "as public knowledge." S.C. Code Ann. § 17-22-130.

16. *Termination of parental rights.* All papers and records relating to the judicial termination of parental rights are confidential and the court records of such a proceeding are to be sealed. S.C. Code Ann. § 20-7-1580.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

South Carolina has statutory evidentiary privileges for priest-penitent (S.C. Code § 19-11-90), mental health care providers (S.C. Code § 19-11-95) and news media (S.C. Code § 19-11-100), but there are no common law privileges or exclusions applicable to public records.

D. Are segregable portions of records containing exempt material available?

If a public record contains information that is not exempt from public disclosure the body shall separate the exempt and nonexempt material and make the nonexempt material available for inspection or copying. S.C. Code Ann. § 30-4-40(b). *Newberry County Pub. Co. v. Newberry County Com'n. on Alcohol and Drug Abuse*, 417 S.E.2d 870 (S.C. 1992); *Burton v. York County Sheriff*, 594 S.E.2d 888 (S.C. App. 2004).

E. Homeland Security Measures.

Information concerning safeguards and off-site consequence analyses the release of which "could increase the risk of acts of terrorism" may be withheld subject to regulations that provide for access to state, federal and local authorities and disclosure to persons living or working within a "vulnerable zone." S.C. Code Ann. § 30-4-45.

III. STATE LAW ON ELECTRONIC RECORDS

South Carolina law does not have a specific reference to electronic records, but the definition of public records "includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials *regardless of physical form or characteristics*," which has been construed to include records in electronic media. S.C. Code Ann. § 30-4-20(c). The Supreme Court of South Carolina has held that a public body may obtain a copyright on "specially-created digital data" to prevent commercial use by recipients, but limited the reach of that ruling to restrict subsequent commercial use by noting that the public must be given access to the data subject to the copyright. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

A. Can the requester choose a format for receiving records?

Records must be furnished in a form that is both convenient and practical for use by the requester if it is equally convenient for the public body to provide the records in the requested form. S.C. Code Ann. § 30-4-30(b).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes, but the agency may charge for the service of searching for the records, and this could include the cost of writing a program for the customized search. Custodians of public records are under no obligation to perform custom searches or to create records. *See* S.C. Code Ann. § 30-4-30(b).

C. Does the existence of information in electronic format affect its openness?

No.

D. How is e-mail treated?

Assuming that the provision in the definition of public records “regardless of physical form or characteristics” extends to electronic records, e-mail will be treated just as any other document. S.C. Code Ann. § 30-4-20(c).

1. Does e-mail constitute a record?

If an e-mail is “prepared, owned, used, in the possession of, or retained by a public body” it is a public record. S.C. Code Ann. §30-4-20(c).

2. Public matter on government e-mail or government hardware

See 1 above.

3. Private matter on government e-mail or government hardware

See 1 above with reference to possession or retention.

4. Public matter on private e-mail

See 1 above with reference to “used” by a public body.

5. Private matter on private e-mail

Matter unrelated to the activities or operation of a public body would not be a public record.

E. How are text messages and instant messages treated?

1. Do text messages and/or instant messages constitute a record?

If a text or instant message is “prepared, owned, used, in the possession of, or retained by a public body” it is by definition a public record. S.C. Code Ann. § 30-4-20(c).

2. Public matter message on government hardware.

See 1 above as to prepared by or in the possession of a public body.

3. Private matter message on government hardware.

See 1 above as to “in the possession of, or retained by a public body.”

4. Public matter message on private hardware.

See 1 above as to “prepared by” or “in the possession of, or retained by a public body”

5. Private matter message on private hardware.

Matters unrelated to the activities of a public body are unlikely to be considered public records when on private hardware.

F. How are social media postings and messages treated?

Social media postings and messages meeting the definition of “public record” discussed above would be public.

G. How are online discussion board posts treated?

See the discussion above regarding the definition of public record. If the posting meets the statutory definition, the posting would be a public record.

H. Computer software

1. Is software public?

The definition of public record includes documentation regardless of physical form or characteristics; therefore, software could be a public record. S.C. Code Ann. §30-4-20(c); *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

2. Is software and/or file metadata public?

Data meeting the definition of public record will be considered pub-

lic records under the Act, but a copyright may be claimed to restrict commercial use. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

I. How are fees for electronic records assessed?

A public body may charge an amount not to exceed the actual cost of searching for, making available or copying public records, including electronic records. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

J. Money-making schemes.

1. Revenues.

No specific statute deals with the disposition of revenues for access to public records.

2. Geographic Information Systems.

A copyright may be claimed by a public body in “specially-created data” to preclude subsequent commercial use by a recipient, but the copyright may not restrict public access for other uses. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

K. On-line dissemination.

Many public bodies are posting records on line for public access without a request or a charge. Anderson County initiated a program to post all of its financial transactions for public inspection.

IV. RECORD CATEGORIES — OPEN OR CLOSED

A. Autopsy reports.

Coroners are subject to the Act and their records are open, but it usually takes some persuasion to gain access to autopsy reports. As a consequence of the death of stock car racer Dale Earnhardt, legislation was adopted to preclude access to autopsy photographs and similar materials. S.C. Code Ann. §§ 17-5-535 and 30-4-40(a)(18). The Sumter County Coroner denied a request by *The Item* newspaper for access to an autopsy report on grounds that it was a medical record and restricted by HIPAA, neither position seems to be supported by anything other than the imagination of the Coroner.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

1. Rules for active investigations.

Disclosure is required unless a law enforcement agency can show harm to the agency or interference with a prospective law enforcement action. S.C. Code Ann. §30-4-40(a)(3); *Evening Post Publishing Co. v. City of N. Charleston*, 611 S.E.2d 496 (S.C. 2005).

2. Rules for closed investigations.

Disclosure required.

C. Bank records.

Bank records relating to applications for charters are closed. S.C. Code Ann. § 30-4-40(a)(2). Bank records containing financial information of a public body, such as checks or vouchers, are specifically declared public information. S.C. Code Ann. § 30-4-50(A)(6).

D. Budgets.

A budget, whether a proposed budget or an adopted budget, is a public record subject to disclosure. S.C. Code Ann. §30-4-20(3).

E. Business records, financial data, trade secrets.

Business records and financial data submitted to the government in most instances will be closed. S.C. Code Ann. §§ 30-4-40(a)(2) and 30-2-50 (precludes use of personal information for commercial solicitation). Property tax returns are open and even though trade secrets are exempt from mandatory disclosure under section 30-4-40(a)(1) if the information is related to the assessment of an ad valorem tax, the information will be available for public inspection and copying. S.C.

Tax Comm'n. v. Gaston Copper Recycling Corp., 447 S.E.2d 843, 22 Media L. Rep. 2211 (S.C. 1994).

F. Contracts, proposals and bids.

Documents incidental to proposed contractual arrangements and proposed sales or purchases of property are closed until the transaction has been completed. S.C. Code Ann. § 30-4-40(a)(5). Under the state's procurement code procurement information is made public with the exception of competitive information of the type not normally released to the general public. S.C. Code Ann. § 11-35-410. Bids are to be opened publicly.

G. Collective bargaining records.

There is no specific reference to collective bargaining records in the act due to the very low incidence of public employee collective bargaining in the state. These records would likely be considered public under the broad definition of public records found in the act. S.C. Code Ann. § 30-4-20(c).

H. Coroners reports.

These records are public, but coroners often have to be persuaded that the law applies to them. Autopsy photographs are exempt from disclosure. S.C. Code Ann. § 30-4-40(a)(18).

I. Economic development records.

Economic development records may be sheltered from disclosure until an offer is accepted and a public announcement made. S.C. Code Ann. §§30-4-40(a)(9) and 30-4-55.

J. Election records.

These are open and no exemption to disclosure seems applicable.

1. Voter registration records.

Official registration records are public records subject to inspection of any citizen at all times. S.C. Code Ann. § 7-5-410.

2. Voting results.

County Boards of Canvassers to make statements of votes and transmit results to State Board of Canvassers. S.C. Code Ann. § 7-17-20. Neither the law nor custom indicate that voting results are not public.

K. Gun permits.

A list of persons with permits to carry concealed weapons may only be released to law enforcement or in response to a subpoena or court order. S.C. Code Ann. § 23-31-215(I).

L. Hospital reports.

Information received by the state health agency's licensing division is public, but information identifying individual patients is confidential. S.C. Code Ann. § 44-7-315. Information regarding the operation of a public hospital, including its finances and governance, is subject to the Act. Medical peer review committee records are not included within the definition of records subject to the act. S.C. Code Ann. § 30-4-20(c).

M. Personnel records.

There is no specific exemption from disclosure for public employee personnel records, but most public bodies seek to assert an exemption under the "unreasonable invasion of personal privacy" rubric. A public body's claim that an internal investigative report of a police department was *per se* exempt from disclosure because it contained personal information was rejected by the Supreme Court of South Carolina. *Columbia v. A.C.L.U. of South Carolina*, 475 S.E.2d 747 (S.C. 1996). The South Carolina Court of Appeals held in *Burton v. York County Sheriff*, 594 S.E. 2d 888 (S.C. App. 2004) that disciplinary records of a sheriff's deputies were not exempt from disclosure under a claim that the release of the records would constitute an unreasonable invasion

of personal privacy.

1. Salary.

The Act addresses compensation and not salary alone. Full disclosure of compensation is required for some categories of employees and disclosure within specified ranges is required for others. S.C. Code Ann. § 30-4-40(a)(6).

2. Disciplinary records.

Disciplinary records are available for inspection and copying. *Columbia v. A.C.L.U. of S.C.*, 475 S.E.2d 747 (S.C. 1996); *Burton v. York County Sheriff*, 594 S.E.2d 888 (S.C. App. 2004)

3. Applications.

Information collected in a search to fill a position may be withheld, but information gathered with respect to "not fewer than the final three applicants under consideration" must be made available in response to a written request. S.C. Code Ann. § 30-4-40(a)(13); *New York Times Co. v. Spartanburg County School Dist. No. 7*, 649 S.E.2d 28 (S.C. 2007).

4. Personally identifying information.

Personally identifying information in state records may not be used for commercial solicitation. S.C. Code Ann. § 30-2-50.

5. Expense reports.

Documents reflecting the expenditure of public money are specifically declared public information. S.C. Code Ann. § 30-4-50(A)(6).

N. Police records.

Police records are public records with access being qualified by specific exemptions applicable when the disclosure of the record would harm the law enforcement agency. S.C. Code Ann. § 30-4-40(a)(3).

1. Accident reports.

Accident reports are available in response to separate written requests for each report sought, and information may not be used for commercial solicitation. S.C. Code Ann. § 56-5-1275.

2. Police blotter.

"[R]eports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed" are subject to public inspection and copying subject to the power of a law enforcement agency to redact information the release of which would harm the agency in specified ways. S.C. Code Ann. §§ 30-4-40(a)(3) and 30-4-50(A)(8); *Evening Post Publishing Co. v. City of N. Charleston*, 611 S.E.2d 496 (S.C. 2005). "[D]ocuments identifying persons confined in any jail, detention center, or prison for the preceding three months" are available for inspection and copying without the necessity of a written request when the person making the request appears in person at the jail. S.C. Code Ann. § 30-4-30(d)(3).

3. 911 tapes.

Public unless the release would harm the agency. S.C. Code Ann. § 30-4-40(a)(3); *Evening Post Publishing Co. v. City of N. Charleston*, 611 S.E.2d 496 (S.C. 2005).

4. Investigatory records.

See answer to 3 above.

a. Rules for active investigations.

See answer to 3 above.

b. Rules for closed investigations.

See answer to 3 above.

5. Arrest records.

Arrest warrants once executed are to be returned to the issuing court where they become judicial records subject to constitutionally protected access rights. S.C. Code Ann. § 17-13-140.

6. Compilations of criminal histories.

Available in response to a written request for a fee set by law. S.C. Code Ann. § 23-3-114; S.C. Regs. § R32-23.

7. Victims.

Records the release of which would harm a law enforcement agency by endangering the life, health or property of a person may be withheld and this could include identifying information regarding a victim. S.C. Code Ann. § 30-4-40(a)(3)(D).

8. Confessions.

Public subject to exemption if the disclosure would harm the law enforcement agency. S.C. Code Ann. § 30-4-40(a)(3).

9. Confidential informants.

May be withheld if the disclosure would harm the law enforcement agency. S.C. Code Ann. § 30-4-40(a)(3)(A).

10. Police techniques.

May be withheld if the disclosure would harm the law enforcement agency. S.C. Code Ann. § 30-4-40(a)(3)(C).

11. Mug shots.

Public records subject to law enforcement exemptions.

12. Sex offender records.

Open for public inspection following a written request to the Sheriff of a county on a state-mandated form. S.C. Code Ann. § 23-3-490.

13. Emergency medical services records.

Identities of patients and emergency medical technicians in emergency medical records must be confidential. S.C. Code Ann. § 24-21-640.

O. Prison, parole and probation reports.

A prisoner's in-prison disciplinary record is subject to the Act. S.C. Code Ann. § 24-21-640. Probation and parole decisions are made by a public body subject to the Act.

P. Public utility records.

Records of accounts with utilities that are public bodies, *e.g.*, a municipal water service, are public records. S.C. Code Ann. § 30-4-50(A)(6).

Q. Real estate appraisals, negotiations.

1. Appraisals.

If the appraisal is incident to the purchase or sale of property by a public body the record may be withheld until a contract is entered into. S.C. Code Ann. § 30-4-40(a)(5).

2. Negotiations.

If the negotiations are engaged in by correspondence, the documents would not be required to be made public until a contract is entered into. S.C. Code Ann. § 30-4-440(a)(5).

3. Transactions.

Contracts, vouchers and other records would be public. S.C. Code Ann. § 30-4-50(A)(6).

4. Deeds, liens, foreclosures, title history.

Deeds, liens, mortgages and similar instruments conveying an estate or creating an interest must be filed to be valid. Since notice is the ob-

ject of the filing, these records are public. S.C. Code Ann. § 30-7-10.

5. Zoning records.

Records of local planning commissions and zoning boards are specifically public record. S.C. Code Ann. §§ 6-29-360(B) and 6-29-790. These entities are public bodies and their activities and records would be subject to the Act. S.C. Code Ann. § 30-4-20(a).

R. School and university records.

1. Athletic records.

Federal law preempts state law with respect to student education records, but athletic records relating to participation in sports activities is considered "directory information" which may be disclosed. 20 U.S.C.A. § 1232g(a)(5)(A).

2. Trustee records.

School boards are public bodies and records of activities of trustee would be public records. S.C. Code Ann. §§ 30-4-20(a) and 30-4-20(c).

3. Student records.

Student educational records are subject to the confidentiality provisions of federal law. 20 U.S.C.A. § 1232g.

S. Vital statistics.

1. Birth certificates.

Confidential except to registrant, parent, guardian or legal representative. S.C. Code § 44-63-80.

2. Marriage & divorce.

Marriage licenses are issued by and filed in the office of the probate judge of a county and any person may receive a certified copy. S.C. Code Ann. § 20-1-340. "Proper parties" (undefined in the statute) may obtain a copy of a marriage license from the State Department of Health and Environmental Control. S.C. Code Ann. § 20-1-350. Divorce records are court records which are public, although some Family Court clerks need to be persuaded on this point.

3. Death certificates.

Available to members of deceased's family, legal representative or others who demonstrate a direct and tangible interest to establish a personal property right. S.C. Code Ann. § 44-63-84.

4. Infectious disease and health epidemics.

Individual medical records are exempt from disclosure under federal law, and sexually transmitted disease records are confidential. S.C. Code Ann. § 44-29-135. Reports are required to be made to the State Department of Health and Environmental Control in instances of deaths from contagious or infectious diseases and chemical or other terrorism. The reports are to include the name and address of the patient and the nature of the disease. S.C. Code Ann. § 44-29-10. It is possible that the information without the patient identifying information would constitute a public record under state law.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

The act does not specify who is to receive the request. As a matter of practice, go to the person who has the documents you seek, unless the agency has a designee to receive requests.

2. Does the law cover oral requests?

Three specific public records are to be made available for inspection and copying when the requester appears at the place where the records are maintained and makes an oral request: minutes of meetings, police

reports and jail logs. S.C. Code Ann. § 30-4-30(d). For records other than those for which an in-person request will trigger their production, the act specifies that requests are to be in writing. Some public bodies will respond to written requests, but if you anticipate that you might have to resort to litigation to receive the records, make your request in writing so that there is a record of the request and the time for the public body's response begins.

a. Arrangements to inspect & copy.

Where a person requesting access to minutes of meetings, crime reports and jail logs appears in person to request access, there is no need for a written request. S.C. Code Ann. § 30-4-30(d). Oral requests are often honored by public bodies, but in many situations the body will require a written request to satisfy a deep-seated bureaucratic need for paper.

b. If an oral request is denied:

A denial of access for jail logs, police reports and minutes of meetings would be a violation of the act, and the remedies available, including injunctive relief, would have application. If you have made an oral request for other records, the oral request may not be sufficient to trigger the timetable for a response. A better practice if you anticipate a contest over the records is to make a written request.

(1). How does the requester memorialize the refusal?

There is no statutory procedure, but a letter to the person denying access confirming the denial would provide a starting point for litigation.

(2). Do subsequent steps need to be in writing?

There are no subsequent steps with respect to oral requests for those categories of records that are to be made available in response to oral requests.

3. Contents of a written request.

The act specifies only that the request for access to records other than those covered in section 30-4-30(d) be in writing. S.C. Code Ann. § 30-4-30(c). This writer's recommendation is to direct a letter to the agency head or chief administrator unless a person has previously been designated by the agency to respond to requests for records. The request should be for access to inspect records unless you have already determined the document you want. The more narrow or precise the request the lower the cost will be for access or copying. It is appropriate in the letter to request a reduced fee where the request is in the public interest. It is appropriate in the request to solicit an itemized estimate of costs for providing access or copies and to suggest a method or time of payment of any deposit required. If you desire a copy in an electronic format, the format should be specified. It is also a good practice when requesting electronic copying to supply the disk or tape for the copy. The law is silent on requests for access to records that may be created or come into the possession of the public body in the future, but those agencies that are cooperative will respond favorably to the request, while those agencies that resist public intrusion into their domains will probably reject continuing requests for access as the records become available.

a. Description of the records.

The more narrow the description of the records the greater the chances that the fee for the search will be reduced or waived.

b. Need to address fee issues.

There is no need to address the fee issue, but, as noted above, it is a good idea to request a reduced fee.

c. Plea for quick response.

Everybody needs everything yesterday, so unless you have a prior

relationship with the public body, your request is likely to invoke the response that appeared on a sign above the desk of an employee in the Department of Motor Vehicles: "Procrastination on your part does not necessarily constitute an emergency on my part."

d. Can the request be for future records?

There is no specific reference to future records, but in the area where a search is being made to fill a position of public employment, it is recommended that a request for access be made at the time the position becomes vacant. Such a request generally relates to future records.

B. How long to wait.

Each public body must within 15 days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a written request for records notify the person making the request of the agency's determination regarding the records and the reasons for the agency's position. If written notification is not mailed or delivered personally to the requester within the time period, the request must be considered approved. S.C. Code Ann. § 30-4-30(c). Until the decision by the Supreme Court of South Carolina in *Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist.*, 443 S.E.2d 574 (S.C. 1994) it could be argued that the public body's failure to respond within the time set by statute precluded the assertion of an exemption. The court held that a failure to respond within the statutory period meant only that the request for access to the nonexempt material had been approved.

1. Statutory, regulatory or court-set time limits for agency response.

None.

2. Informal telephone inquiry as to status.

No statutory reference, but not precluded.

3. Is delay recognized as a denial for appeal purposes?

Yes. A failure to respond within the statutory time causes the request to be granted. The stated purpose of the act is to enable citizens to learn of the activities of government at a minimum cost or delay, so a delay can be considered to be a de facto denial of access. S.C. Code Ann. § 30-4-15.

4. Any other recourse to encourage a response.

Not available.

C. Administrative appeal.

Not applicable in South Carolina.

1. Time limit.

Not applicable in South Carolina.

2. To whom is an appeal directed?

Not applicable in South Carolina.

a. Individual agencies.

Not applicable in South Carolina.

b. A state commission or ombudsman.

Not applicable in South Carolina.

c. State attorney general.

Not applicable in South Carolina.

3. Fee issues.

Not applicable in South Carolina.

4. Contents of appeal letter.

Not applicable in South Carolina.

a. Description of records or portions of records denied.

Not applicable in South Carolina.

b. Refuting the reasons for denial.

Not applicable in South Carolina.

5. Waiting for a response.

Not applicable in South Carolina.

6. Subsequent remedies.

Not applicable in South Carolina.

D. Court action.

1. Who may sue?

“Any citizen of the State” may bring suit. “Citizen” would include corporations. S.C. Code Ann. § 30-4-100(a).

2. Priority.

No priority is given, but in cases involving the expenditure or possible misuse of public funds, courts have been known to expedite consideration of the case.

3. Pro se.

It is possible to bring suit without an attorney, but this reduces the likelihood for success unless the *pro se* litigant has experience in making a focused argument.

4. Issues the court will address:

Suit is authorized “to enforce the provisions” of the act. Enforcement may relate to denial of the request, applicability of claimed exemptions from disclosure, reasonableness of the fees, format of the copies provided, constraints on access for inspection or any other matter within the scope of the act. S.C. Code Ann. § 30-4-100(a).

a. Denial.

This is the most common basis for a suit, and the method by which the public body’s assertion of an exemption is tested.

b. Fees for records.

The Supreme Court of South Carolina has held that copy costs may not exceed the actual cost of making copies. *Seago v. Horry County*, 663 S.E.2d 38 (S.C. 2008).

c. Delays.

Delay is treated as denial.

d. Patterns for future access (declaratory judgment).

The act allows declaratory judgments as well as injunctive relief.

5. Pleading format.

Suit is subject to the South Carolina Rules of Civil Procedure and requires the filing of a summons and a complaint with allegations of fact and a request for relief.

6. Time limit for filing suit.

Suit must be filed and served no later than one year following the date on which the violation of the act occurred or one year after a public vote in public session when the vote discloses a previously undisclosed violation of the act. S.C. Code Ann. § 30-4-100(a).

7. What court.

Court of Common Pleas.

8. Judicial remedies available.

Injunction and declaratory judgment.

9. Litigation expenses.

A court may award a successful plaintiff reasonable attorney fees and other costs of litigation. If the plaintiff prevails in part, the court may in its discretion award fees or an appropriate portion of the fees. S.C. Code Ann. (1991) § 30-4-100(b); *Society of Professional Journalists v. Sexton*, 324 S.E.2d 563, 11 Media L. Rep. 1334 (S.C. 1984); *Burton v. York County Sheriff*, 594 S.E. 2d 888 (S.C. App. 2004); *Campbell v. Marion County Hosp. Dist.*, 580 S.E.2d 163 (S.C. App. 2003).

a. Attorney fees.

See above.

b. Court and litigation costs.

See above.

10. Fines.

Fines are allowed upon conviction of an intentional violation of the act, but there has been no prosecution under the act since its first incarnation in 1974. S.C. Code Ann. § 30-4-110.

11. Other penalties.

None.

12. Settlement, pros and cons.

As in most litigation, a settlement is appropriate in a suit under the act because it brings a certain outcome, provides for a quicker resolution of the dispute and in most cases reduces costs. In several instances the public body settled the same day the suit was brought thus giving rise to the suspicion that the body’s attorney had not known of the body’s response to a request until the suit was filed. Typically a suit over a request for records can be resolved by some compromise on the scope of redaction or the timing of the release of the information. Of course, some public bodies are so recalcitrant it is necessary to take the litigation to its conclusion.

E. Appealing initial court decisions.

1. Appeal routes.

Appeals must be noticed to the South Carolina Court of Appeals.

2. Time limits for filing appeals.

A notice of appeal must be served and filed within 30 days of receipt of the trial court order and appellant has 30 days thereafter to order a copy of the trial transcript. The schedule for briefing is established by the South Carolina Appellate Court Rules.

3. Contact of interested amici.

Persons or organizations interested in participating as *amici* must seek leave of the appellate court by filing a petition. The South Carolina Press Association frequently participates as *amicus* in appeals under the act and advises other interested groups where a case may be appropriate for *amicus* participation.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

F. Addressing government suits against disclosure.

There is no prohibition against a public body initiating a suit seeking a declaration of the scope of disclosure required by the statute. There are two reported cases of this nature, and in both cases disclosure was appropriate. *City of Columbia v. American Civil Liberties Union of S.C. Inc.*, 475 S.E.2d 747 (S.C. 1996); *S.C. Tax Com’n. v. Gaston Copper Recycling Corp.*, 447 S.E.2d 843 (S.C. 1994).

Open Meetings

I. STATUTE — BASIC APPLICATION.

A. Who may attend?

Meetings are open to the public, including the news media. No citizenship or residency requirement is established. S.C. Code Ann. § 30-4-60.

B. What governments are subject to the law?

“Public bodies” which are defined in the act as political subdivisions and entities supported in whole or in part by public funds or expending public funds. S.C. Code Ann. § 30-4-20(a).

1. State.

Yes.

2. County.

Yes.

3. Local or municipal.

Yes.

C. What bodies are covered by the law?

“Public bodies” which are defined in the act as political subdivisions and entities supported in whole or in part by public funds or expending public funds. S.C. Code Ann. § 30-4-20(a).

1. Executive branch agencies.

a. What officials are covered?

The meetings of public bodies, including boards and commissions of the executive branch, are subject to the act. Meetings of the governor’s cabinet are subject to the act in those instances when the cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power. S.C. Code Ann. § 30-4-65.

b. Are certain executive functions covered?

A meeting is the convening of a quorum of the constituent membership of a public body, so an executive branch agency such as a commission or board would meet when a quorum of the commissioners or board members gathered. A recent Supreme Court decision, *Quality Towing Inc. v. City of Myrtle Beach*, 547 S.E.2d 862 (S.C. 2001), made clear the application of the act to advisory committees appointed by executive branch bodies.

c. Are only certain agencies subject to the act?

All public bodies are subject to the act for records and meetings, and where a single executive acts through subordinates who act as a committee or hearing panel, those meetings are subject to the act. *Burton v. York County Sheriff*, 594 S.E.2d 888 (S.C. 2004).

2. Legislative bodies.

The legislature is subject to the act and specific provisions apply for meetings of committees and subcommittees. S.C. Code Ann. § 30-4-80(b). The General Assembly may enter into executive session as authorized by the state constitution and the rules of either house. S.C. Code Ann. § 30-3-70(e).

3. Courts.

Access to court proceedings is gained under state and federal constitutional provisions rather than under the act. See, e.g., *Ex parte The Island Packet*, 417 S.E.2d 575 (S.C. 1992).

4. Nongovernmental bodies receiving public funds or benefits.

A public body is defined to include entities supported in whole or in part by public funds or expending public funds, so the meetings of such bodies would be covered by the act. S.C. Code Ann. (1991) § 30-4-20(a).

5. Nongovernmental groups whose members include governmental officials.

If the nongovernmental group received support from public funds or expended public funds, the entity would be subject to the act. Membership by a governmental official in a group would not make the group subject to the act unless the group met the other qualifications. S.C. Code Ann. § 30-4-20(a). The receipt of public funds by a nongovernmental entity in exchange for goods and services will not make the nongovernmental entity a public body under the act. *Weston v. Carolina Research and Development Found.*, 401 S.E.2d 161 (S.C. 1991); *Sutler v. Palmetto Elec. Coop. Inc.*, 481 S.E.2d 179 (S.C. App. 1997).

6. Multi-state or regional bodies.

If the body meets the definition of a public body under the act, that is a body supported in whole or in part by public funds or expending public funds, it would be subject to the act. S.C. Code Ann. § 30-4-20(a).

7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards, commissions and quasi-governmental bodies are defined as “public bodies” under the act and are subject to its open meetings requirements. S.C. Code Ann. § 30-4-20(a). *Quality Towing, Inc v. City of Myrtle Beach*, 547 S.E. 2d 862 (S.C. 2001).

8. Other bodies to which governmental or public functions are delegated.

The test to be satisfied under the act is whether the entity if it is not a governmental body is supported in whole or in part by public funds or expends public funds. If the test is met, the entity is subject to the act. S.C. Code Ann. § 30-4-20(a). *Weston v. Carolina Research and Development Found.*, 401 S.E. 2d 161 (S.C. 1991).

9. Appointed as well as elected bodies.

If the entity is a governmental body, it is subject to the act. If the entity is supported in whole or in part by public funds or expends public funds, it is subject to the act without regard to how the membership is selected. S.C. Code Ann. § 30-4-2(a); *Burton v. York County Sheriff*, 594 S.E.2d. 888 (S.C. App. 2004).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

A meeting is the convening of a quorum of the constituent membership of a public body. S.C. Code Ann. § 30-4-20(d). A quorum unless otherwise defined in law is a simple majority of the constituent membership of the body. S.C. Code Ann. § 30-4-20(e).

a. Must a minimum number be present to constitute a “meeting”?

A quorum must be present to have a “meeting” under the act. S.C. Code Ann. § 30-4-20(d).

b. What effect does absence of a quorum have?

Under the act there can be no meeting without a quorum. Most governmental bodies have operational rules that provide that no business may be conducted in the absence of a quorum. S.C. Code Ann. § 30-4-20(d).

2. Nature of business subject to the law.

The test is not the nature of the business being transacted that makes a gathering subject to the act. The convening of a quorum constitutes a meeting subject to the act. S.C. Code Ann. (1991) § 30-4-20(d). No chance meeting, social gathering or electronic communication may be used to act on a matter within the jurisdiction of a public body. S.C. Code Ann. § 30-4-70(d).

a. “Information gathering” and “fact-finding” sessions.

The label given to a meeting is of no consequence so long as a quorum is present.

b. Deliberations toward decisions.

Some deliberations, such as whether to dismiss an employee, may be held in a meeting closed to the public, but the decision has to be made in an open meeting. S.C. Code Ann. § 30-4-70.

3. Electronic meetings.

A meeting under the act occurs when a quorum of the constituent membership of the body convenes in person or “by means of electronic equipment.” S.C. Code Ann. § 30-4-20(d). When the public body convenes electronically the act would seem to require an opportunity for the public to have access to the electronic meeting to make the meeting public.

a. Conference calls and video/Internet conferencing.

Electronic communications may be used to facilitate if there is an opportunity for public presence. The key language on the issue is found in section 30-4-70(C), which provides: “No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” While the quoted section has not been the subject of litigation, the law clearly precludes a public body from using e-mail, Twitter, Facebook or telephone communications to act.

b. E-mail.

Subject to the act.

c. Text messages.

While this issue has not been the subject of litigation, the law clearly precludes a public body from using e-mail, Twitter, Facebook or telephone communications to act.

d. Instant messaging.

See above.

e. Social media and online discussion boards.

See above.

E. Categories of meetings subject to the law.

All meetings of public bodies are subject to the act and required to be convened in public. S.C. Code Ann. § 30-4-60.

1. Regular meetings.

a. Definition.

No express definition, but by implication those meetings that are scheduled to take place on a regular schedule. S.C. Code Ann. § 30-4-80(a).

b. Notice.

(1). Time limit for giving notice.

For regular meetings written public notice must be given at the be-

ginning of each calendar year. For special, called or rescheduled meetings notice must be given as soon as is practicable but at least 24 hours in advance except for emergency meetings. Emergency is not defined, but it would seem to be that which cannot wait 24 hours for action. Legislative committees must post their meeting times during weeks of the regular session of the legislature and give 24-hour advance notice for meetings when the body is out of session. Legislative subcommittees during session must give notice of a meeting only if it is practicable to do so. Subcommittees other than legislative subcommittees must make reasonable and timely efforts to give notice. S.C. Code Ann. (1991) § 30-4-80.

(2). To whom notice is given.

Persons or organizations, local news media, or such other news media as may request notification are to receive notice of the times, dates, places, and agenda of all public meetings. S.C. Code Ann. § 30-4-80(e).

(3). Where posted.

Notice of regular meetings must be posted on a bulletin board at the office or meeting place of the public body. S.C. Code Ann. § 30-4-80(a) and (d).

(4). Public agenda items required.

An agenda is required and must be posted for special, called or rescheduled meetings and optional for regular meetings. If an agenda is used for a regular meeting it is to be posted. S.C. Code Ann. § 30-4-80. Persons requesting notice and local news media are to receive notice and an agenda for all meetings, suggesting that the optional nature of an agenda contained in section 30-4-80(a) has been supplanted by a mandatory agenda requirement in section 30-4-80(d).

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

An ordinance adopted by a county following two unannounced meetings was invalidated. *Business License Opposition Committee v. Sumter County*, 426 S.E.2d 745 (S.C. 1992). The act provides for injunctive relief as well as a declaratory judgment. Criminal penalties are provided for, but no prosecution has been made.

c. Minutes.

Minutes are required of all meetings. S.C. Code Ann. § 30-4-90.

(1). Information required.

Minutes must include at least: (a) the date, time and place of the meeting, (b) the members present or absent, (c) the substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken, and (d) any other information that any member of the body requests be included in the minutes. S.C. Code Ann. § 30-4-90.

(2). Are minutes public record?

Minutes are public record, but disclosure of the minutes of closed sessions is not required. S.C. Code Ann. § 30-4-50(7). Minutes of meetings for the preceding six months are to be made available without a written request when the person seeking access or copies appears in person. S.C. Code Ann. § 30-4-30(d)(1).

2. Special or emergency meetings.

a. Definition.

Not defined in the act, but since 24-hour advance notice is required for special meetings, an emergency meeting for which notice is not required should be for a purpose that cannot wait until the notice period has expired. S.C. Code Ann. § 30-4-80.

b. Notice requirements.**(1). Time limit for giving notice.**

Notice is to be given as soon as practicable for non-regular meetings, but not less than 24 hours in advance of meetings. S.C. Code Ann. § 30-4-80(a). The act says “This requirement does not apply to an emergency meeting,” but it is unclear whether the “requirement” relates to the notice itself or to the contents of notice. S.C. Code Ann. § 30-3-80(a).

(2). To whom notice is given.

Notice must be given to local news media and to persons, organizations and other news media requesting notification. S.C. Code Ann. § 30-4-80(e), and it must be posted to give notice to the public. S.C. Code Ann. § 30-4-80.

(3). Where posted.

Notice is to be posted on a bulletin board at the office of the public body or the place of the meeting. S.C. Code Ann. § 30-4-80.

(4). Public agenda items required.

An agenda must be provided for special meetings. No agenda requirement is imposed on emergency meetings. S.C. Code Ann. § 30-4-80.

(5). Other information required in notice.

None.

(6). Penalties and remedies for failure to give adequate notice.

There is no notice requirement for an emergency meeting, but the failure to provide notice for a special meeting could result in injunctive relief, including a voiding of any action taken at the unannounced meeting. *Business License Opposition Committee v. Sumter County*, 436 S.E.2d 745 (S.C. 1992).

c. Minutes.**(1). Information required.**

(a) date, time and place of meeting, (b) members present or absent, (c) substance of all matters proposed, discussed or decided, and, at the request of any member, a record by member of votes taken, and (d) any other information that a member requests be included. S.C. Code Ann. § 30-4-90.

(2). Are minutes a public record?

Minutes are public record, but the minutes of closed sessions do not have to be disclosed. S.C. Code Ann. § 30-4-50(7). Minutes of meetings for the preceding six months must be made available without a written request when the person seeking access appears in person. S.C. Code Ann. § 30-4-30(d)(1).

3. Closed meetings or executive sessions.**a. Definition.**

A closed meeting or executive session is one closed to the public for the purpose of discussing specific topics. S.C. Code Ann. § 30-4-70.

b. Notice requirements.

One Court of Appeals decision has held that there is no obligation to give notice of an executive session. *Herald Pub. Co. v. Barnwell*, 351 S.E.2d 878 (S.C. App. 1986). It would seem that if there were to be action taken on the subject discussed in executive session, the action item would need to be on the agenda even if the executive session were not.

(1). Time limit for giving notice.

No notice other than the notice for a public meeting is required

because an executive session must be convened from a public meeting. S.C. Code Ann. § 30-4-70.

(2). To whom notice is given.

Notice is to be given to local news media and other persons or groups who request notice, and notice of a meeting must be posted. S.C. Code Ann. § 30-4-80.

(3). Where posted.

Notice of the public meeting is to be posted in the office of the public body or at the place of the meeting. S.C. Code Ann. § 30-4-80.

(4). Public agenda items required.

No agenda is required for a regular meeting, but if used must be posted. An agenda is always required for a special meeting. S.C. Code Ann. § 30-4-80.

(5). Other information required in notice.

Notice of regularly scheduled meetings must be given at the first of each year, and must state at a minimum the date, time and place of the meetings. S.C. Code Ann. § 30-4-80(a).

(6). Penalties and remedies for failure to give adequate notice.

The failure to give notice of a public meeting can result in injunctive relief against the public body. S.C. Code Ann. § 30-4-90. The failure to give notice of a meeting at which an ordinance was adopted led to the voiding of the ordinance by the court as an equitable remedy. *Business License Opposition Committee v. Sumter County*, 426 S.E.2d 745 (S.C. 1992).

c. Minutes.

Minutes are required of all public meetings, but the minutes of the portion of the meeting held closed to the public need not be made public. S.C. Code Ann. § 30-4-90.

(1). Information required.

The act specifies that at a minimum the minutes must contain: (a) date, time and place of meeting, (b) members present or absent, (c) substance of all matters proposed or discussed [since no vote may be taken in executive session there should be no vote to record], and (d) any other information requested by a member to be included.

(2). Are minutes a public record?

Minutes of executive sessions are public records, but exempt from mandatory disclosure. S.C. Code Ann. § 30-4-90(b).

d. Requirement to meet in public before closing meeting.

A public body must meet in public prior to voting to convene in executive session. S.C. Code Ann. § 30-4-70(a)(6).

e. Requirement to state statutory authority for closing meetings before closure.

The public body must state the specific purpose of the executive session prior to convening in executive session, but most members of public bodies cannot distinguish between a generic purpose, e.g., a personnel matter, and a specific purpose, e.g., to discuss the hiring of a new elementary school principal. S.C. Code Ann. § 30-4-70(b).

f. Tape recording requirements.

None.

F. Recording/broadcast of meetings.

All or any part of a meeting may be recorded by any person in attendance, except that executive session meetings may not be recorded. S.C. Code Ann. § 30-4-90(c).

1. Sound recordings allowed.

Tape recording of public meetings is allowed. S.C. Code Ann. § 30-4-90(c).

2. Photographic recordings allowed.

The act allows for recording by sonic or video recording, and while photo coverage is not specified, it is customarily allowed. S.C. Code Ann. § 30-4-90(c).

G. Are there sanctions for noncompliance?

Civil actions may be initiated for declaratory judgment and injunctive relief in the event the public body seeks to interfere with a citizen's right to record. S.C. Code Ann. § 30-4-100. Criminal prosecution exists as a possibility. S.C. Code Ann. § 30-4-110.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

Exemptions are for discussion of specific matters.

b. Mandatory or discretionary closure.

Closure is discretionary as the act states a public body may hold a meeting closed to the public for one or more of the specified purposes. S.C. Code Ann. § 30-4-70(a).

2. Description of each exemption.

a. Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body. S.C. Code Ann. § 30-4-70(a)(1).

b. Discussion of negotiations incident to proposed contractual arrangements and proposed sale and purchase of property, receipt of legal advice and the position of the agency in an adversary situation involving the assertion of a claim against the agency. S.C. Code Ann. § 30-4-70(a)(2).

c. Discussion regarding the development of security personnel or devices. S.C. Code Ann. § 30-4-70(a)(3).

d. Investigative proceedings regarding allegations of criminal misconduct. S.C. Code Ann. § 30-4-70(a)(4).

e. Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industry or business in the area served by the public body. S.C. Code Ann. § 30-4-70(a)(5).

f. The State Budget and Control Board, while meeting as the trustee of the State Retirement System, or of the State Retirement Systems Investment Panel. S.C. Code Ann. § 30-4-70(a)(6).

B. Any other statutory requirements for closed or open meetings.

The legislature may meet in executive session in accordance with the state constitution and the rules of each house. S.C. Code Ann. § 30-4-70(e). Before going into executive session the public body must vote on a motion to enter into the session, and the specific purpose of the closed session must be stated if the vote is favorable. S.C. Code Ann. § 30-4-70(b). No action may be taken in executive session except to adjourn or return to public session. The public body may not commit to a course of action by the polling of members in executive session. *Id.*

C. Court mandated opening, closing.

A court could, within the scope of injunctive relief available under the act, order a meeting to be held open to the public.

III. MEETING CATEGORIES — OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Where a public body is holding an adversarial hearing the person appearing before the body may demand that the hearing be open to the public. The public body may hear the case in public and then convene in executive session to discuss the matter. No vote or formal action may be taken in executive session. The body must return to public session to vote. S.C. Code Ann. § 30-4-70.

1. Deliberations closed, but not fact-finding.

A public body making a decision regarding dismissal of an employee or the discipline of a regulated person or entity may discuss the decision in a meeting closed to the public, but may not make a decision outside of public view. S.C. Code Ann. § 30-4-70.

2. Only certain adjudications closed, i.e. under certain statutes.

A public body considering discipline or release of an employee, a student, or a person regulated by a public body may deliberate in closed session, but must vote on the issue in public. S.C. Code Ann. § 30-4-70.

B. Budget sessions.

The adoption of a budget should be public under the act because there is no exemption that fairly encompasses the budget process. But some public bodies try to debate budget matters behind closed doors, claiming that the discussion is about compensation of employees. Some also claim it relates to "personnel matters," notwithstanding there is no exception to the open meeting requirement for discussion of personnel matters.

C. Business and industry relations.

A public body may discuss in executive session matters relating to the proposed location or services to be provided for businesses in the area served by the public body. S.C. Code Ann. § 30-4-70(a)(5).

D. Federal programs.

There is no exemption for federal programs.

E. Financial data of public bodies.

Financial data relating to the assertion of a claim against a body could be discussed in executive session, but a discussion generally on financial data is not authorized. S.C. Code Ann. § 30-4-70(a)(2).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

While these categories of information would be exempt from mandatory disclosure in public records, there is no comparable exemption from public discussion. *See City of Columbia v. A.C.L.U. of South Carolina*, 475 S.E.2d 747 (S.C. 1996).

G. Gifts, trusts and honorary degrees.

There is no exemption for these matters as meetings.

H. Grand jury testimony by public employees.

Grand jury testimony is confidential no matter what the employment status of the witness. *State v. Whitted*, 305 S.E.2d 245 (S.C. 1983).

I. Licensing examinations.

Licensing examinations would be subject to the act only if conducted by a quorum of a public body. S.C. Code Ann. § 30-4-20(e).

J. Litigation; pending litigation or other attorney-client privileges.

Discussion of claims and litigation and the receipt of legal advice are

allowed for executive session. S.C. Code Ann. § 30-4-70(a)(2).

K. Negotiations and collective bargaining of public employees.

Discussion of negotiations incident to a proposed contractual relationship may be had in executive session. S.C. Code Ann. § 30-4-70(a)(1).

1. Any sessions regarding collective bargaining.

There is no specific reference to collective bargaining in the act.

2. Only those between the public employees and the public body.

There is no provision in the act for executive session for collective bargaining.

L. Parole board meetings, or meetings involving parole board decisions.

A parole board could hold an executive session to discuss a parole matter, but in practice these discussions are public.

M. Patients; discussions on individual patients.

There is no reference in the act to patients.

N. Personnel matters.

A public body may hold an executive session discussion relating to the employment, appointment, compensation, promotion, demotion, discipline or release of an employee, but by the terms of the exemption the discussion must relate to an employee and not employees generally. S.C. Code Ann. § 30-4-70(a)(1).

1. Interviews for public employment.

The interview could be held in a session closed to the public. S.C. Code Ann. § 30-4-70(a)(1).

2. Disciplinary matters, performance or ethics of public employees.

Discussion of discipline of an employee could be held in a session closed to the public. S.C. Code Ann. § 30-4-70(a)(1).

3. Dismissal; considering dismissal of public employees.

A discussion regarding dismissal of an employee could be held in a session closed to the public. S.C. Code Ann. § 30-4-70(a)(1).

O. Real estate negotiations.

Discussion of negotiations incident to the sale or purchase of property may be held in executive session. The argument can be made that the public body can only discuss its negotiating position in a session closed to the public, but if it wants to negotiate as a body it must do so in public. S.C. Code Ann. § 30-4-70(a)(2).

P. Security, national and/or state, of buildings, personnel or other.

Discussion regarding the development of security personnel or devices may be held in executive session. S.C. Code Ann. § 30-4-70(a)(3).

Q. Students; discussions on individual students.

A school board could meet in executive session to consider promotion, demotion, discipline or release of an individual student. S.C. Code Ann. § 30-4-70(a)(1).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

The South Carolina Press Association and the South Carolina

Broadcasters Association provide cards for reporters with language to use when challenging a public body attempting to enter executive session illegally. The card instructs reporters to stand, address the chair of the meeting and state an objection to closing the meeting.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

No, but a court of equity will in the appropriate circumstances require the public body to appear in court to show cause why it should not be enjoined from holding a meeting closed to the public when the law requires the meeting to be open to the public. S.C. Code Ann. § 30-4-100.

2. When barred from attending.

The act does provide that a violation of the act is an irreparable injury for which no adequate remedy at law exists, so injunctive relief may be sought. S.C. Code Ann. § 30-4-100.

3. To set aside decision.

The injunctive relief provision of the act includes the power to set aside decisions reached improperly in executive session. *Piedmont Pub. Serv. Dist. v. Cowart*, 459 S.E.2d 876 (S.C. App. 1995).

4. For ruling on future meetings.

Injunctive relief could include a prohibition against future illegal executive session meetings. *Business License Opposition Committee v. Sumter County*, 426 S.E.2d 745 (S.C. 1992).

B. How to start.

1. Where to ask for ruling.

Under the South Carolina act, relief in the form of an injunction or a declaratory judgment may be sought from the Court of Common Pleas. The action is initiated by the filing of a summons and complaint. Rule 3, South Carolina Rules of Civil Procedure.

a. Administrative forum.

There is no administrative forum.

b. State attorney general.

Not an option for review.

c. Court.

A suit may be filed in the Court of Common Pleas seeking injunctive relief. S.C. Code Ann. § 30-4-100. A criminal may also be initiated by seeking a warrant from a magistrate. S.C. Code Ann. § 30-4-110.

2. Applicable time limits.

A suit must be filed within one year of the date of the alleged violation. S.C. Code Ann. § 30-4-100(a).

3. Contents of request for ruling.

Pleadings would be governed by the South Carolina Rules of Civil Procedure and the complaint would require factual allegations and a request for relief.

4. How long should you wait for a response?

The public body, as a defendant, would have 30 days from the date of service of a summons and complaint to answer.

5. Are subsequent or concurrent measures (formal or informal) available?

None specified.

C. Court review of administrative decision.

1. Who may sue?

Any citizen of the state, including corporations. S.C. Code Ann. §

30-4-100.

2. Will the court give priority to the pleading?

No statutory priority is given, but it is possible to seek temporary injunctive relief in advance of a meeting to prevent the harm, pending an opportunity to get the case heard. Rule 65, S.C. Rules of Civil Procedure.

3. Pro se possibility, advisability.

Pro se relief is possible, but is probably not the wisest course.

4. What issues will the court address?

The court will review the propriety of a closed meeting, whether action was taken in the closed meeting and the appropriate relief, including an award of attorney fees and costs.

a. Open the meeting.

The court could order a meeting opened.

b. Invalidate the decision.

The court could invalidate a decision reached in executive session. *Piedmont Pub. Serv. Dist. v. Cowart*, 459 S.E.2d 876 (S.C. App. 1995).

c. Order future meetings open.

The court could enjoin future illegal executive session meetings. *Business License Opposition Committee v. Sumter County*, 426 S.E.2d 745 (S.C. 1992).

5. Pleading format.

Summons and complaint are pursuant to South Carolina Rules of Civil Procedure.

6. Time limit for filing suit.

A suit must be filed within one year from date of the illegal act.

7. What court.

Court of Common Pleas.

8. Judicial remedies available.

Declaratory judgment and injunctive relief are available.

9. Availability of court costs and attorneys' fees.

If a party prevails against the government, the court has discretion to award fees and costs. Two recent decisions make the award of attorney fees more certain if a party prevails against the public body. *Burton v. York County Sheriff*, 594 S.E.2d 888 (S.C. App. 2004); *Campbell v. Marion County Hosp. Dist.*, 580 S.E.2d 163 (S.C. App. 2003).

10. Fines.

The act provides for criminal fines. There has been but one known prosecution under the act since it was first enacted in 1974, and that prosecution resulted in not guilty verdicts for the defendants. S.C. Code Ann. § 30-4-110.

11. Other penalties.

None.

D. Appealing initial court decisions.

1. Appeal routes.

Appeal is taken to the South Carolina Court of Appeals pursuant to the South Carolina Rules of Appellate Procedure.

2. Time limits for filing appeals.

A notice of appeal must be served and filed within 30 days from receipt of the trial court order. Rule 203 (b)(1), S.C. Appellate Court Rules.

3. Contact of interested amici.

The Court of Appeals or the Supreme Court of South Carolina must grant leave for participation by *amici*. Rule 213, S.C. Rules of Appellate Procedure. The South Carolina Press Association often participates as *amicus* in cases arising under the act and provides notice to other groups that may be interested.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

A. Is there a right to participate in public meetings?

No, but many local government bodies allow for public comment.

B. Must a commenter give notice of intentions to comment?

The requirements would vary with the rules of the particular public body. Some public bodies require citizens to request a position on the agenda in order to address the body, while others merely have a sign-in sheet for a public comment period.

C. Can a public body limit comment?

Yes, so long as the limitation is content-neutral *e.g.*, the imposition of a time limit. A content-specific restriction would likely constitute unconstitutional prior restraint.

D. How can a participant assert rights to comment?

There is no formal procedure.

E. Are there sanctions for unapproved comment?

No.

Statute

Open Records and Meetings

Code of Laws of South Carolina 1976

Title 30. Public Records

Chapter 4. Freedom of Information Act

§ 30-4-10. *Short title.*

This chapter shall be known and cited as the “Freedom of Information Act”.

§ 30-4-15. *Findings and purpose.*

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

§ 30-4-20. *Definitions.*

(a) “Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, 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, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

(b) “Person” includes any individual, corporation, partnership, firm, organization or association.

(c) “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. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

(d) “Meeting” means the convening of a quorum of the constituent mem-

bership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervisory, control, jurisdiction or advisory power.

(e) “Quorum” unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

§ 30-4-30. *Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.*

(a) Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that 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 may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

(d) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

(1) minutes of the meetings of the public body for the preceding six months;

(2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day; and

(3) documents identifying persons confined in any jail, detention center, or prison for the preceding three months.

§ 30-4-40. *Matters exempt from disclosure.*

(a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(2) Information of a personal nature where the public disclosure thereof

would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses and information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records of law enforcement and public safety agencies not otherwise available by state and federal law that were compiled in the process of detecting and investigating crime if the disclosure of the information would harm the agency by:

(A) disclosing identity of informants not otherwise known;

(B) the premature release of information to be used in a prospective law enforcement action;

(C) disclosing investigatory techniques not otherwise known outside the government;

(D) by endangering the life, health, or property of any person; or

(E) disclosing any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.

(4) Matters specifically exempted from disclosure by statute or law.

(5) Documents of and documents incidental to proposed contractual arrangements and documents of and documents incidental to proposed sales or purchases of property; however:

(a) these documents are not exempt from disclosure once a contract is entered into or the property is sold or purchased except as otherwise provided in this section;

(b) a contract for the sale or purchase of real estate shall remain exempt from disclosure until the deed is executed, but this exemption applies only to those contracts of sale or purchase where the execution of the deed occurs within twelve months from the date of sale or purchase;

(c) confidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.

(6) All compensation paid by public bodies except as follows:

(A) For those persons receiving compensation of fifty thousand dollars or more annually, for all part-time employees, for any other persons who are paid honoraria or other compensation for special appearances, performances, or the like, and for employees at the level of agency or department head, the exact compensation of each person or employee;

(B) For classified and unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation between, but not including, thirty thousand dollars and fifty thousand dollars annually, the compensation level within a range of four thousand dollars, such ranges to commence at thirty thousand dollars and increase in increments of four thousand dollars;

(C) For classified employees not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the salary schedule showing the compensation range for that classification including longevity steps, where applicable;

(D) For unclassified employees, including contract instructional employees, not subject to item (A) above who receive compensation of thirty thousand dollars or less annually, the compensation level within a range of four thousand dollars, such ranges to commence at two thousand dollars and increase in increments of four thousand dollars.

(E) For purposes of this subsection (6), "agency head" or "department head" means any person who has authority and responsibility for any department of any institution, board, commission, council, division, bureau, center, school, hospital, or other facility that is a unit of a public body.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; how-

ever, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

(9) Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body and of a person or entity employed by or authorized to act for or on behalf of a public body to attract business or industry to invest within South Carolina; however, an incentive agreement made with an industry or business: (1) requiring the expenditure of public funds or the transfer of anything of value, (2) reducing the rate or altering the method of taxation of the business or industry, or (3) otherwise impacting the offeror fiscally, is not exempt from disclosure after:

(a) the offer to attract an industry or business to invest or locate in the offeror's jurisdiction is accepted by the industry or business to whom the offer was made; and

(b) the public announcement of the project or finalization of any incentive agreement, whichever occurs later.

(10) Any standards used or to be used by the South Carolina Department of Revenue for the selection of returns for examination, or data used or to be used for determining such standards, if the commission determines that such disclosure would seriously impair assessment, collection, or enforcement under the tax laws of this State.

(11) Information relative to the identity of the maker of a gift to a public body if the maker specifies that his making of the gift must be anonymous and that his identity must not be revealed as a condition of making the gift. For the purposes of this item, "gift to a public body" includes, but is not limited to, gifts to any of the state-supported colleges or universities and museums. With respect to the gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure.

(12) Records exempt pursuant to Section 9-16-80(B) and 9-16-320(D).

(13) All materials, regardless of form, gathered by a public body during a search to fill an employment position, except that materials relating to not fewer than the final three applicants under consideration for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item "materials relating to not fewer than the final three applicants" do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by this section.

(14)

(A) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data, records, or information has not been publicly released, published, copyrighted, or patented.

(B) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of a state institution of higher education or any public or private entity supporting or participating in the activities of a state institution of higher education in the conduct of or as a result of study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until the information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This item applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, proposals, methodologies, protocols, and creative works.

(C) The exemptions in this item do not extend to the institution's financial or administrative records.

(15) The identity, or information tending to reveal the identity, of any individual who in good faith makes a complaint or otherwise discloses information, which alleges a violation or potential violation of law or regulation, to a

state regulatory agency.

(16) Records exempt pursuant to Sections 59-153-80(B) and 59-153-320(D).

(17) Structural bridge plans or designs unless: (a) the release is necessary for procurement purposes; or (b) the plans or designs are the subject of a negligence action, an action set forth in Section 15-3-530, or an action brought pursuant to Chapter 78 of Title 15, and the request is made pursuant to a judicial order.

(18) Photographs, videos, and other visual images, and audio recordings of and related to the performance of an autopsy, except that the photographs, videos, images, or recordings may be viewed and used by the persons identified in Section 17-5-535 for the purposes contemplated or provided for in that section.

(19) Private investment and other proprietary financial data provided to the Venture Capital Authority by a designated investor group or an investor as those terms are defined by Section 11-45-30.

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30-4-30, 30-4-50, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

§ 30-4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined.

(A) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 "Distribution of Off-site Consequence Analysis Information", or 10 CFR 73.21 "Requirements for the protection of safeguards information", must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

(1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and

(2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, "vulnerable zone" is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

§ 30-4-50. Certain matters declared public information; use of information for commercial solicitation prohibited.

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

(1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;

(5) written planning policies and goals and final planning decisions;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;

(8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report.

(9) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.

§ 30-4-55. Disclosure of fiscal impact on public bodies offering economic incentives to business; cost-benefit analysis required.

A public body as defined by Section 30-4-20(a), or a person or entity employed by or authorized to act for or on behalf of a public body, that undertakes to attract business or industry to invest or locate in South Carolina by offering incentives that require the expenditure of public funds or the transfer of anything of value or that reduce the rate or alter the method of taxation of the business or industry or that otherwise impact the offeror fiscally, must disclose, upon request, the fiscal impact of the offer on the public body and a governmental entity affected by the offer after:

(a) the offered incentive or expenditure is accepted, and

(b) the project has been publicly announced or any incentive agreement has been finalized, whichever occurs later.

The fiscal impact disclosure must include a cost-benefit analysis that compares the anticipated public cost of the commitments with the anticipated public benefits. Notwithstanding the requirements of this section, information that is otherwise exempt from disclosure under Section 30-4-40(a)(1), (a)(5)(c), and (a)(9) remains exempt from disclosure.

§ 30-4-60. Meetings of public bodies shall be open.

Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.

§ 30-4-65. Cabinet meetings subject to chapter provisions; cabinet defined.

(A) The Governor's cabinet meetings are subject to the provisions of this chapter only when the Governor's cabinet is convened to discuss or act upon a matter over which the Governor has granted to the cabinet, by executive order, supervision, control, jurisdiction, or advisory power.

(B) For purposes of this chapter, "cabinet" means the directors of the departments of the executive branch of state government appointed by the Gov-

error pursuant to the provisions of Section 1-30-10(B)(1)(i) when they meet as a group and a quorum is present.

§ 30-4-70. Meetings which may be closed; procedure; circumvention of chapter; disruption of meeting; executive sessions of General Assembly.

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(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; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

(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.

(6) The Retirement System Investment Commission, if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C).

(b) Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated. No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(d) This chapter does not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

(f) The Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C).

§ 30-4-80. Notice of meetings of public bodies.

(a) All public bodies, except as provided in subsections (b) and (c) of this section, must give written public notice of their regular meetings at the beginning of each calendar year. The notice must include the dates, times, and places of such meetings. Agenda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings. All public bodies must post on such bulletin board public notice for any called, special, or rescheduled meetings. Such notice must be posted as early as is practicable but not later than twenty-four hours before the meeting. The notice must include the agenda,

date, time, and place of the meeting. This requirement does not apply to emergency meetings of public bodies.

(b) Legislative committees must post their meeting times during weeks of the regular session of the General Assembly and must comply with the provisions for notice of special meetings during those weeks when the General Assembly is not in session. Subcommittees of standing legislative committees must give notice during weeks of the legislative session only if it is practicable to do so.

(c) Subcommittees, other than legislative subcommittees, of committees required to give notice under subsection (a), must make reasonable and timely efforts to give notice of their meetings.

(d) Written public notice must include but need not be limited to posting a copy of the notice at the principal office of the public body holding the meeting or, if no such office exists, at the building in which the meeting is to be held.

(e) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

§ 30-4-90. Minutes of meetings of public bodies.

(a) All public bodies shall keep written minutes of all of their public meetings. Such minutes shall include but need not be limited to:

(1) The date, time and place of the meeting.

(2) The members of the public body recorded as either present or absent.

(3) The substance of all matters proposed, discussed or decided and, at the request of any member, a record, by an individual member, of any votes taken.

(4) Any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic or video reproduction, except when a meeting is closed pursuant to Section 30-4-70 of this chapter, provided that in so recording there is no active interference with the conduct of the meeting. Provided, further, that the public body is not required to furnish recording facilities or equipment.

§ 30-4-100. Injunctive relief; costs and attorney's fees.

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

§ 30-4-110. 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 not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

§ 30-4-160. *Sale of Social Security number or driver's license photograph or signature.*

(A) This chapter does not allow the Department of Motor Vehicles to sell, provide, or otherwise furnish to a private party Social Security numbers in its records, copies of photographs, or signatures, whether digitized or not, taken for the purpose of a driver's license or personal identification card.

(B) Photographs, signatures, and digitized images from a driver's license or personal identification card are not public records.

§ 30-4-165. *Privacy of driver's license information.*

(A) The Department of Motor Vehicles may not sell, provide, or furnish to a private party a person's height, weight, race, social security number, pho-

tograph, or signature in any form that has been compiled for the purpose of issuing the person a driver's license or special identification card. The department shall not release to a private party any part of the record of a person under fifteen years of age who has applied for or has been issued a special identification card.

(B) A person's height, weight, race, photograph, signature, and digitized image contained in his driver's license or special identification card record are not public records.

(C) Notwithstanding another provision of law, a private person or private entity shall not use an electronically-stored version of a person's photograph, social security number, height, weight, race, or signature for any purpose, when the electronically-stored information was obtained from a driver's license record.