


SC FOIA Requests Timeline and Fees


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Immediately Available Records

- Certain records must be made available for inspection during business hours without the need for a written request: (1) minutes of meetings held during the preceding six months; (2) law enforcement incident reports for the preceding fourteen day period; (3) documents identifying persons detained for the preceding three months; (4) documents produced by a public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six months.



Response Times and Formats

- 10 business days to respond to a request (20 business days for records over 24 months old).
- Public record must be provided within 30 calendar days from the date of response (35 calendar days for records over 24 months old).
- Request is considered granted if no response is received within the set limits (only for nonexempt records or information).
- Timetables may be extended by mutual consent.



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What Does it Mean to Respond?

- “This determination must constitute the final opinion of the public body as to the public availability of the requested public record, however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws.”



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The Meaning of “Final Opinion”

- See *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014).
- DOR Response: “The South Carolina Department of Revenue has received your Freedom of Information request dated November 19, 2012. Your request is currently being researched and reviewed. As soon as the information has been compiled, you will be contacted again and the requested information will be sent to you. If we are unable to locate, obtain or release the requested file(s) you will be notified of the decision and the reasons for it.”
- Court holding: “DOR's response did not comply with the statutory dictates of FOIA. While DOR did respond to Sloan, its equivocal and evasive response was not a final opinion on the public availability of the requested documents and did not state whether the information requested by Sloan was publicly available for inspection, copying, or production.”



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Brawley v. Richland Cnty., 907 S.E.2d 792 (Ct. App. 2024).

- Richland County applied for federal grants and loans to fund the Lower Richland Sewer Project. Wendy Brawley submitted a FOIA request for the loan application and supporting documentation.
- The County initially produced six pages of documents. Brawley did not believe this was a full response.
- Brawley filed a lawsuit under FOIA in March 2015. In June 2015, the County produced fifty-five pages of supplemental materials, and allowed her to review the entire file. She identified roughly 120 pages of additional documents during this inspection that she claimed were relevant to her FOIA request.



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Brawley v. Richland Cnty., 907 S.E.2d 792 (Ct. App. 2024).

- “We agree with the County that FOIA does not require public bodies to seek documents from third parties or recreate documents in order to respond to FOIA requests.”
- But “the County possessed additional responsive documents beyond the six pages originally produced and the County failed to diligently search for and disclose the later-produced documents prior to Brawley filing this case.”
- The lower court ordered the County to pay \$80,845.71 in attorneys’ fees. The Court of Appeals reversed and sent the case back to the lower court to reconsider.



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Permissible Fees

- S.C. Code §30-4-30(B): “The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records.”
- Records must be furnished at the lowest possible cost (hourly salary of lowest-paid employee capable of fulfilling request). Different employees may be required for different requests.
- Fees may not include time to determine if an exemption applies, including legal fees, but may include legal fees necessary to redact records.
- Public body may require a deposit of not more than 25% of anticipated costs before copies of documents are made.
- Public body must adopt a fee schedule and post it on its website: “The public body shall develop a fee schedule to be posted online.”



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What Time Can Be Charged

- The statute allows you to charge for copies and for “search, retrieval, and redaction.”
- For copies, the charge “may not exceed the prevailing commercial rate for the producing of copies.”
- For electronic records, “Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format.”
- What about time to download?



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Higher Paid Employees?

- For security or privacy reasons, sometimes only a more highly compensated person (e.g., human resources director or police chief) can review the records to prepare a response.
- It is probably permissible in those cases to charge their hourly rates, but be cautious in using this option.



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Fees for Outside Counsel?

- “The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records.”
- but-
- “Fees may not be charged for examination and review to determine if the documents are subject to disclosure.”



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Best Practices for FOIA Requests

- Adopt a comprehensive FOIA Policy.
- Include a fee schedule and deposit requirements, and put it on the website.
- Assign a specific position the responsibility to coordinate FOIA responses.
- Ask requestors to use an approved form, but respond to all “written requests.”
- Adopt all possible exemptions, but keep in mind that typically the decision to apply an exemption is up to the local government.
- Respond to FOIA requests as quickly and completely as possible.
- Include a “completion form” with all FOIA responses that includes a commercial solicitation warning.



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