

South Carolina General Assembly
122nd Session, 2017-2018

A67, R102, H3352

STATUS INFORMATION

General Bill

Sponsors: Reps. W. Newton, Taylor, Norrell and Erickson

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Companion/Similar bill(s): 99, 481, 3482

Introduced in the House on January 10, 2017

Introduced in the Senate on March 23, 2017

Last Amended on May 11, 2017

Passed by the General Assembly on May 11, 2017

Governor's Action: May 19, 2017, Signed

Summary: Office of Freedom of Information Act Review

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/15/2016	House	Prefiled
12/15/2016	House	Referred to Committee on Judiciary
1/10/2017	House	Introduced and read first time (House Journal-page 171)
1/10/2017	House	Referred to Committee on Judiciary (House Journal-page 171)
2/8/2017	House	Committee report: Favorable with amendment Judiciary (House Journal-page 16)
2/9/2017	House	Member(s) request name added as sponsor: Norrell
2/9/2017		Scrivener's error corrected
2/14/2017	House	Debate adjourned until Wed., 3-8-17 (House Journal-page 7)
2/16/2017	House	Member(s) request name added as sponsor: Erickson
3/8/2017	House	Debate adjourned until Wed., 3-22-17 (House Journal-page 8)
3/22/2017	House	Amended (House Journal-page 18)
3/22/2017	House	Read second time (House Journal-page 18)
3/22/2017	House	Roll call Yeas-93 Nays-0 (House Journal-page 21)
3/23/2017	House	Read third time and sent to Senate (House Journal-page 10)
3/23/2017	Senate	Introduced and read first time (Senate Journal-page 8)
3/23/2017	Senate	Referred to Committee on Judiciary (Senate Journal-page 8)
4/20/2017	Senate	Referred to Subcommittee: Campsen (ch), Young, Fanning
5/3/2017	Senate	Committee report: Favorable Judiciary (Senate Journal-page 14)
5/9/2017	Senate	Amended (Senate Journal-page 64)
5/10/2017	Senate	Amended (Senate Journal-page 53)
5/10/2017	Senate	Read second time (Senate Journal-page 53)
5/10/2017	Senate	Roll call Ayes-40 Nays-0 (Senate Journal-page 53)
5/11/2017		Scrivener's error corrected
5/11/2017	Senate	Amended
5/11/2017	Senate	Read third time and returned to House with amendments (Senate Journal-page 43)
5/11/2017	House	Concurred in Senate amendment and enrolled (House Journal-page 63)
5/11/2017	House	Roll call Yeas-89 Nays-0 (House Journal-page 64)
5/15/2017		Ratified R 102
5/19/2017		Signed By Governor
5/26/2017		Effective date 5/19/17

5/31/2017

Act No. 67

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VERSIONS OF THIS BILL

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(A67, R102, H3352)

AN ACT TO AMEND SECTION 30-4-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RIGHTS TO INSPECT PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE ELECTRONIC TRANSMISSIONS AMONG THE RECORD FORMATS AVAILABLE FOR INSPECTION, TO PROVIDE CERTAIN LIMITATIONS APPLICABLE TO PRISONERS, TO PROVIDE PUBLIC BODIES ARE NOT REQUIRED TO CREATE ELECTRONIC VERSIONS OF PUBLIC RECORDS TO FULFILL RECORDS REQUESTS, TO REVISE REQUIREMENTS CONCERNING RECORDS REQUEST FULFILMENT FEES, TO PERMIT PUBLIC BODIES TO CHARGE CERTAIN DEPOSITS BEFORE SEARCHING AND COPYING PUBLIC RECORDS IN RESPONSE TO RECORDS REQUESTS, AND TO REVISE THE TIME LIMITS AND MANNER FOR RESPONDING TO RECORDS REQUESTS AND COMPLYING WITH THE PROVISIONS OF THE ACT; TO AMEND SECTION 30-4-40, AS AMENDED, RELATING TO MATTERS EXEMPT FROM DISCLOSURE IN THE FREEDOM OF INFORMATION ACT, SO AS TO REVISE PROVISIONS CONCERNING LAW ENFORCEMENT RECORDS; TO AMEND SECTION 30-4-50, RELATING TO CATEGORIES OF MATTERS DECLARED TO BE PUBLIC INFORMATION IN THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE LAW ENFORCEMENT VEHICLE-MOUNTED VIDEOS AND AUDIO RECORDINGS OF CERTAIN INCIDENTS INVOLVING LAW ENFORCEMENT OFFICERS, TO PROVIDE PROCEDURES THROUGH WHICH ENFORCEMENT MAY SEEK EXEMPTION OF DISCLOSURE OF THE RECORDINGS FROM THE CIRCUIT COURT IF THERE IS CLEAR AND CONVINCING EVIDENCE OF SPECIFIC HARM FROM THE RELEASE OF THE RECORDINGS, AND TO PROVIDE REQUIREMENTS FOR RELATED COURT ORDERS; TO AMEND SECTION 30-4-100, RELATING TO EQUITABLE REMEDIES AVAILABLE UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE TIME CONSTRAINTS WITHIN WHICH DETERMINATIVE HEARINGS ON THE REQUESTS FOR RELIEF MUST BE MADE; TO AMEND SECTION 30-4-110, RELATING TO PENALTIES FOR VIOLATIONS OF THE FREEDOM OF INFORMATION ACT, SO AS TO REMOVE

CRIMINAL PENALTIES, AND TO PROVIDE RIGHTS AND REMEDIES OF PUBLIC BODIES FROM WHOM REQUESTS ARE MADE AND PERSONS WITH SPECIFIC INTERESTS IN EXEMPT INFORMATION FOR WHICH DISCLOSURE IS SOUGHT, AMONG OTHER THINGS; AND TO AMEND SECTION 30-2-50, RELATING TO THE PROHIBITION ON OBTAINING PERSONAL INFORMATION FROM A STATE AGENCY FOR COMMERCIAL SOLICITATION, SO AS TO EXTEND THE PROHIBITION TO INFORMATION OBTAINED FROM LOCAL GOVERNMENTS AND POLITICAL SUBDIVISIONS OF THE STATE.

Be it enacted by the General Assembly of the State of South Carolina:

FOIA, electronic records, prisoner rights, fees, deposits

SECTION 1. Section 30-4-30 of the 1976 Code is amended to read:

“Section 30-4-30. (A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

(B) The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. 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. 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. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

(C) Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. 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. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. The full

amount of the total cost must be paid at the time of the production of the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, electronically transmitted, nor personally delivered to the person requesting the document within the time set forth by this section, the request must be considered approved as to nonexempt records or information. Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

(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, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, 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;

(3) documents identifying persons confined in a jail, detention center, or prison for the preceding three months; and

(4) all documents produced by the 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-month period.

(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request."

FOIA, exemptions, law enforcement records

SECTION 2. Section 30-4-40(a)(2) and (3) of the 1976 Code is amended to read:

"(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, 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, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim's statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim's next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) would interfere with a prospective law enforcement proceeding;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) would constitute an unreasonable invasion of personal privacy;

(D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;

(E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;

(F) would endanger the life or physical safety of any individual;

(G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.”

FOIA, inclusions, law enforcement records, judicial relief

SECTION 3. Section 30-4-50 of the 1976 Code is amended to read:

“Section 30-4-50. (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) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle-mounted recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.

(a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in-camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then released, upon a showing by clear and

convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

(10) 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.”

FOIA, equitable remedies, time constraints for court hearings

SECTION 4. Section 30-4-100 of the 1976 Code is amended to read:

“Section 30-4-100. (A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. 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 relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court

may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees."

FOIA, penalties, criminal penalties removed, remedies

SECTION 5. Section 30-4-110 of the 1976 Code is amended to read:

"Section 30-4-110. (A) A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

(B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the court or to intervene in an action previously filed.

(C) If a person or entity seeking relief under this section prevails, the court may order:

- (1) equitable relief as he considers appropriate;
- (2) actual or compensatory damages; or

(3) reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

(D) If a court determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the court's determination be reversed on appeal.

(E) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

(F) If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars."

Disclosable personal information, commercial solicitation use, local governments

SECTION 6. Section 30-2-50 of the 1976 Code is amended to read:

“Section 30-2-50. (A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.”

Severability

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2017.

Approved the 19th day of May, 2017.