

State Human Resources Policy #E24-100.07

Freedom of Information Policy

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

DEFINITIONS

Agency – The South Carolina Military Department/Office of the Adjutant General

POLICY

1. The records of the South Carolina Military Department/Office of the Adjutant General are open to the public for inspection and copying pursuant to, and subject to any limitations of, the South Carolina Freedom of Information Act (FOIA), SC Code of Laws 30-4-10 et seq. (1976, as amended). Requests for Federal or National Guard records are processed in accordance with federal law and respective federal policies, procedures and areas of responsibility (Information regarding federal FOIA requests is available at <https://www.scguard.com/foia/>).

2. State FOIA Coordinator

a. The Agency's State Human Resources Officer is designated as the Agency's State FOIA Coordinator for FOIA requests pertaining to State records (Federal records are also maintained by this Agency and the State HRO is not involved in processing those federal FOIA requests).

b. The Agency FOIA Coordinator will:

- Ensure The Adjutant General and the appropriate Agency leadership is aware of State FOIA requests and their status
- Ensure all State FOIA requests are handled in a consistent manner and in accordance with the SC FOIA and this policy
- Ensure open access, accountability, and timely and appropriate response to State FOIA requests in accordance with the SC FOIA and this policy
- Coordinate all State FOIA requests
- Coordinate with the South Carolina National Guard's federal FOIA Coordinators
- Maintain a log of all State FOIA requests, responses, and other activities
- Maintain applicable records in accordance with the State Records Retention Schedule

3. Requests for Information

a. The Agency will only accept FOIA requests for State records in writing or electronic format (i.e., will not accept verbal requests) except as noted in the following paragraph.

b. The Agency will make the following State records available, without requiring the requestor to make a written request to inspect or copy the records, when the requestor appears in person during the Agency's normal hours of operations (i.e., Monday-Friday, 8:00 am – 4:00 pm except on State Holidays), unless the record is exempt pursuant to SC Code of Laws 30-4-40 or other State or Federal laws:

- Minutes of Agency public meetings for the preceding six (6) months
- Agency reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed for at least the fourteen-day (14) period before the current day
- All documents produced by the Agency or its agent that were distributed to or reviewed by a member of the Agency during a public meeting for the preceding six (6) month period.

4. Suspense for Timely Response

a. Within ten (10) days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of a FOIA request, the Agency will provide to the person making the request its determination and the reasons for it. If the record is more than twenty-four (24) months old at the date the request is made, the Agency has twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification.

b. This determination must constitute the final opinion of the Agency as to the public availability of the requested public record. However, the determination will not necessarily 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 SC Code of Laws 30-4-40 or other State or Federal laws.

c. If the Agency grants the request, the Agency will furnish the record or make it available for inspection or copying no later than thirty (30) calendar days from the date on which the Agency provided its final determination. If the records are more than twenty-four (24) months old, the Agency has no later than thirty-five (35) calendar days from the date on which the Agency provided its final determination.

d. The response, determination, and production deadlines are subject to extension by written mutual agreement of the Agency (i.e. FOIA Coordinator) and the requesting party.

5. The Agency is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

6. Fees

a. The Agency will establish and maintain a Schedule of Fees associated with the retrieval of information responsive to State FOIA requests in accordance with SC Code of Laws 30-4-30.

b. The Agency may require a deposit for fees (not to exceed 25% of total reasonably anticipated costs for reproduction) once it provides a final determination.

c. The requestor must pay the full balance of the total fees at the time they receive the records.

d. The Agency may furnish documents when appropriate without charge or at a reduced charge where the State FOIA Coordinator 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.

PROCEDURE

1. Schedule of Fees

a. See Freedom of Information Fee Schedule at <https://sctag.org/public-notice>.

b. Fees will include both the cost of reproduction and personnel costs for research and retrieval.

2. Requirements for FOIA Request

a. Except for those requests made pursuant to SC Code 30-4-30(D)-(E) and paragraph 3 of this Policy, requestors must submit their request in writing or in electronic format (i.e., the agency will generally not accept verbal requests).

(1) The Agency does not require the use of a particular form to initiate a State FOIA request; however, the Agency's FOIA Request Form may be found at <https://sctag.org/forms> under the Freedom of Information area.

(2) Requestors who do not utilize the Agency's FOIA Request Form must:

- Label the request "Freedom of Information Act (FOIA)."
- Acknowledge having reviewed The Family Privacy Protection Act, SC Code of Laws 30-2-50, which prohibits any person or private entity from knowingly obtaining or using any personal information obtained from our agency for commercial solicitation directed to any person in the State, and confirm their understanding that violation of this law is a crime.
- Agree to pay applicable fees, including a deposit if required.

b. The Requestor must describe the specific records they are requesting in sufficient detail such that Agency personnel can locate the requested information within a reasonable amount of time and effort.

3. Requesting Legal Guidance.

a. The State FOIA Coordinator will refer requests which involve ongoing litigation, enforcement activities, or confidentiality to the State Judge Advocate Office, the Agency's General Counsel, and/or the South Carolina Attorney General's Officer for advice.

b. The State FOIA Coordinator will also refer to the South Carolina Attorney General's website for a copy of the "SC Public Official's Guide to Compliance with South Carolina's Freedom of Information Act", as well as for existing FOIA-related opinions which provide detailed guidance regarding Agency FOIA compliance issues (see scag.gov/opinions).

4. Statutory Exemptions From Release

a. Certain requests may require the State FOI Coordinator to make a determination regarding if the information is releasable (e.g., confidentiality, trade secret, or other FOIA statutory exemptions). In such cases, State FOIA Coordinator will use the procedures required pursuant to SC Code §30-4-30(C).

b. The State FOIA Coordinator should compare the requested information against the exemptions listed in the SC FOIA (see SC Code 30-4-40 and the explanations included in the "SC Public Official's Guide to Compliance with South Carolina's Freedom of Information Act" (see <http://www.scpres.org/Documents/2017FOIBook.pdf>)).

c. The State FOIA Coordinator should coordinate with the Agency's General Counsel to develop a current list of the potentially applicable provisions for use as a screening tool (e.g., an electronic, searchable list).

5. If the requested records are available and releasable, the State FOIA Coordinator will arrange for retrieval, review and/or copying of records.

a. The State FOIA Coordinator should schedule an appointment with the Requestor to review the requested records.

b. Requestor review and copying of records will ordinarily take place within the offices of the State Human Resources during normal Agency business hours (i.e., Monday-Friday, 8:00 am – 4:00 pm except on State Holidays). However, at the sole discretion of the FOIA Coordinator, the review and copying may take place at other locations and at other times.