

# 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, Title 30, Chapter 4 of the SC Code of Laws (South Carolina Freedom of Information Act (FOIA)).

a. Federal Records

(1) Requests for Federal records retained by the South Carolina National Guard records are processed in accordance with Federal law and respective Federal policies, procedures and areas of responsibility are not subject to this Policy or the SC FOIA, and are under the release authority of the National Guard Bureau (NGB).

(2) Information regarding SC National Guard (Federal) FOIA requests is available at <https://www.scguard.ng.mil/Freedom-of-Information-Act-FOIA/>.

b. The Agency is not required to create an electronic version of a public record when one does not exist.

c. In appropriate circumstances, the Agency may seek relief in court from a request that is unduly burdensome, overly broad, vague, etc.

2. State FOIA Coordinator

a. The Agency's State Public Information Officer is designated as the Agency's State FOIA Coordinator for FOIA requests pertaining to State records

b. Federal records are also maintained by parts of this Agency (the National Guard) and the State FOIA Coordinator is not involved in processing those Federal FOIA requests.

c. 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 applicable statutory laws, regulations and policies
- Ensure open access, accountability, and timely and appropriate response to State FOIA requests in accordance with statutes, regulations and policies
- Coordinate all State FOIA requests actions and responses

- Coordinate with the SC National Guard's Federal FOIA Coordinators as necessary
- Periodically review the applicable State and Federal FOIA laws and regulations to ensure compliance.
- Periodically review the applicable Agency wage scales and update the Freedom of Information Fee Schedule as necessary.
- Maintain a log of all State FOIA requests, responses, and other activities
- Maintain copies of applicable State FOIA related records and responses in accordance with the State Records Retention Schedule

### 3. Methods for Requests for Information

a. The Agency will only accept FOIA requests for State records in writing or electronic format, except as noted in the following paragraph. (See <https://scmd.sc.gov/state-operations> - "FOIA" tab) for a copy of the Agency's *Freedom of Information Request Form* and submission instructions)

#### b. Verbal FOIA Requests

(1) The Agency will make the following State records available, without requiring the requestor to make a written request, 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
- 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.

(2) The Agency will generally not process other verbal requests pursuant to SC FOIA. These types of requests are not subject to this Policy and are not governed by statutory FOIA procedures, deadlines/suspenses, etc.

#### c. Written/Electronic FOIA Requests

(1) The Agency does not require the use of a particular form to initiate a written or electronic State FOIA request. However, the Agency's suggested "FOIA Request Form" may be found at <https://scmd.sc.gov/state-operations> - "FOIA" tab.

(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.

(3) The Requestor must attempt to 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.

#### 4. Suspense for Timely Response

a. Within ten (10) business 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) business days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification.

b. The Agency's initial determination will include a final opinion as to the public availability of the requested record. However, the determination will not necessarily include a final decision or opinion as to whether portions of the record(s) may be redacted as provided for in 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. 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 office of the FOIA Coordinator 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.

#### 6. 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).

#### 7. 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 SC Attorney General's Office for advice and guidance.

b. The State FOIA Coordinator will also refer to the "SC Public Official's Guide to Compliance with South Carolina's Freedom of Information Act" (see <http://www.scpres.org/Documents/2017FOIBook.pdf>)

for guidance with compliance with the South Carolina Freedom of Information Act, and the SC Attorney General's website for existing FOIA-related opinions regarding FOIA compliance issues (see <https://www.scag.gov/opinions/opinions-archive/>).

8. 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.

(1) A copy of the Agency's Freedom of Information Fee Schedule is located at <https://scmd.sc.gov/state-operations> - "FOIA" tab.

(2) Fees will include both the cost of reproduction and personnel costs for research and retrieval.

b. The Agency may require a deposit for fees (not to exceed 25% of total reasonably anticipated costs for reproduction) as a part of or 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.