

AN ORDINANCE ADOPTING AND ENACTING A NEW PROCEDURE REGARDING REQUESTS FOR PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA) AND TO RESCIND ALL PRIOR ORDINANCES AND RESOLUTIONS WHICH MAY BE IN CONFLICT WITH THIS ORDINANCE

WHEREAS, this ordinance will comply with both the letter and the spirit of the Freedom of Information Act (“FOIA”), as codified at §30-4-10 et seq. of the Code of Laws of South Carolina 1976, as amended, in regards to the processing of requests for access to public records; and,

WHEREAS, this policy is applicable to all departments under the supervision of the Abbeville County Director, and to any board or commission whose members are appointed by Abbeville County Council, the governing body of Abbeville County (the “Council”).

NOW THEREFORE BE IT RESOLVED by the Abbeville County Council duly assembled that:

Making a FOIA request: All requests for public documents pursuant to FOIA, except for those described below, must be made in writing. Requests made to Council Members or Department Heads may be forwarded to the County Director, but the requester should not assume they have been forwarded to the appropriate party. If the requester does not receive an acknowledgement of receipt of the FOIA request within 24 hours from the County Director or the County Attorney, the requester should assume the FOIA request has not been properly submitted and should make their request again. Requests may be made in person at the Abbeville County Administrative Complex, 903 West Greenwood Street, Abbeville, SC 29620; by mail to the same address, Attn: County Director. Requests shall be made using the Freedom of Information Act Request Form (the “*Request Form*”) provided by the County and made available to the public, a copy of which is attached hereto. When requests are submitted by fax, letter, or some other form, the requesting individual will be instructed to submit the request using one of the approved methods set forth in this Policy. In order to ensure the most accurate and prompt response, requests should be as detailed, specific, and descriptive as possible. With the exception of the records detailed below, a charge is applied to all FOIA requests to compensate the Town for the cost of the staff time and materials necessary to respond to even the most minimal request. A 25% deposit is required at the time the request is made for processing of the request to begin.

Exemptions: The following public records need not be in writing, provided the requestor appears at the appropriate County office in-person and within normal business hours:

1. Minutes of all public meetings of the County for the preceding six (6) months including documents distributed to or reviewed by council members.

2. Reports from the preceding fourteen (14) days which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed (with the exception of records regarding juveniles).
3. Documents identifying persons confined in any jail, detention center, or prison for the preceding three (3) months (with the exception of records regarding juveniles).
4. Documents created by the governing body and distributed to members of council during a public meeting within the preceding (6) months.

The County's agendas and minutes are immediately available on our website free of charge (www.abbevillecountysc.com).

Processing FOIA requests: The County Director is designated as the staff member to be responsible for and familiar with any FOIA request. Should any County employee or Council member receive any written request for public records, the request should be stamped with the date of receipt and immediately delivered to the County Director and the Clerk to Council. The Clerk to Council will compile and maintain a log of all FOIA requests, including response dates and fees collected. Where an exemption, restriction or limitation to FOIA possibly exists, the County Director should consult with the County Attorney to determine if any exemption, restriction, or limitation applies and whether the County should decline to disclose the records based upon the exemption, restriction, or limitation. Elected/appointed officials are generally directly responsible for addressing FOIA requests for information maintained in a department under their supervisory authority.

As required by FOIA (§30-4-30), the County Director must respond within ten (10) business days to a written FOIA request; if the documents are two (2) years old or less. Where possible, the response to the request should include the requested documents. Otherwise, the response should either inform the requestor that the requested documents will be made available, along with the means of obtaining them and any additional costs that will be charged for making the records available, or it should inform the requestor that the requested documents fall under an exemption to FOIA and will not be disclosed. The County has thirty (30) calendar days from the response date to actually produce the documents. Requested documents shall be released in the format most convenient to the County. For documents greater than twenty four (24) months old, the County Director must respond within twenty (20) business days to a written FOIA request and has thirty five (35) calendar days from the response date to actually produce the documents. A deposit charge of 25% of all fees is required before processing requests. Records will be held until full cost is received.

Records exempt from disclosure: The County as a part of this policy adopt any and all exemptions, restrictions or limitations contained within FOIA, as FOIA may be amended from time to time, along with any other exemptions, restrictions or limitations that may be provided for now or in the future under South Carolina or Federal law. Where documents contain certain information exempt from disclosure, but which otherwise fall outside of an exemption, restriction or limitation, the exempted information shall be redacted and requested documents shall otherwise be disclosed. Information that cannot be disclosed are; social security numbers, birthdays, home addresses, victim information, Family Leave, information protected by HIPPA, workers compensation claims and other matters of personal or private nature.

Appeal process: If the requestor feels certain items have been improperly exempted from disclosure he/she should immediately contact the County Director and the County Attorney with their disagreement to the exemption and note specifically the types of material the requestor believes should be disclosed and why. If the requestor does not receive an acknowledgement of receipt of the disagreement within twenty four (24) hours from either the County Director or the County Attorney, the requestor should assume the FOIA request has not been properly submitted and should make their request again. Within five (5) business days the County Director or County Attorney shall reply to the disagreement and indicate whether they have additional information that will be disclosed. If at any time the County Director or County Attorney indicates there is no other material they will disclose, the requestor can appeal their decision to three (3) Council Members, one chosen by staff, one chosen by the requestor and the third chosen by the first two Council Members; to consider an appeal by the requestor in regards to their request. In their discretion, the Council Members can choose to consider such an appeal solely on written materials or by meeting with the requestor and staff. The Council Members can disclose additional material, refer the matter to the entire Council, affirm the decision of staff, or ask staff to file a Declaratory Judgement in order to ascertain the legitimacy of the request while at the same time limiting the County's exposure to attorney's fees for denying the request.

Per SC Code of Laws Section 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.

Commercial Solicitation: FOIA §30-2-50 prohibits a person or private entity from knowingly obtaining personal information from a local government or other political subdivision for commercial purposes.

Failure to comply: In addition to penalties available under FOIA, willful disregard of, or violation of this Policy by any employee or other person who is subject to it, may constitute insubordination and be grounds for disciplinary action up to and including termination of employment.

Costs for processing FOIA requests: Pursuant to the authority of Section 30-4-30(b) of the Code of Laws of South Carolina, as amended, the South Carolina Constitution and the general law of the State of South Carolina; there shall be charged to all persons or entities making a request to Abbeville County, South Carolina, for public records under the South Carolina Freedom of Information Act the requestor will be required to pay a deposit of 25% of the estimated costs of complying with the request before staff will begin searching for or making copies of the requested records. Records shall only be produced after the balance of the costs is paid by the requestor. Costs shall


not be charged for time spent examining records to determine whether they may be disclosed. The following is a fee schedule of charges.


- a. Each request's cost is calculated based on the estimated time that it will take to search for and prepare the information; the cost of CD's, sleeves, mailers, printed pages, postage, and any other actual cost. All costs are actual or less, Abbeville County does not make a profit on the labor or materials used;
- b. Copying charges shall be paid at the rate of twenty-five (\$.25) cents per copy;
- c. Hourly charges for search, retrieval, and redaction will not exceed the prorated hourly rate of the lowest paid employee who has the necessary skills and training to perform the request;

Retention of requests: There is hereby established a records retention schedule of three (3) years for all FOIA requests, responses and associated information.

Adopted this 18th day of September, 2017

Abbeville County Council

By: 
Robert B. McClain, Chairman

Attest:

Lynn Sopolosky, Clerk to Council

1 st Reading	July 10, 2017
2 nd Reading	August 14, 2017
Public Hearing	August 14, 2017
3 rd Reading	September 18, 2017