

CLARENDON COUNTY, SOUTH CAROLINA
FREEDOM OF INFORMATION ACT POLCY

I. PURPOSE

The purpose of the Clarendon County Freedom of Information Act (FOIA) Policy (“Policy”) is to set forth a uniform policy for processing, responding to, and tracking requests for public records. This Policy is intended to balance Clarendon County’s (“County”) commitment to transparency and openness, while ensuring the protection of the County’s confidentiality concerns and security interests.

This Policy does not intend to encompass all aspects of FOIA law, nor to detail the specific procedures of the County’s FOIA specialists. Any term not specifically defined in this Policy shall be defined as provided for in S.C. Code Ann. Title 30 Chapter 4.

II. BACKGROUND

The South Carolina Freedom of Information Act, S.C. Code Ann. Title 30 Chapter 4 provides the public access to public records in the possession of Clarendon County in order to “learn and report fully the activities of their public officials.” S.C. Code Ann. §30-4-15. Except as provided for by law, FOIA governs access to public records in the possession of public bodies or its officers and employees.

III. APPLICABILITY

This policy is applicable to all departments under the supervision of the Clarendon County Administrator and to any board or commission whose members are appointed by the County Council of Clarendon County. This Policy shall apply to all parties submitting a request for public records including, but not limited to, individual citizens, businesses, and media.

IV. ROLES AND RESPONSIBILITIES

A. Elected Officials and Appointed Officials

Public Records in the possession of elected and appointed officials of the County, including emails and text messages, are subject to disclosure under FOIA, and the failure of elected or appointed officials to comply with FOIA could result in legal or financial liability for the County. Elected officials (i.e., County Council, Clerk of Court, Probate Judge, Sheriff, Coroner, Auditor, and Treasurer) and their departments, boards and officers, who are not subordinate to the County Administrator, may handle FOIA requests that pertain to them individually or to their County departments; however, doing so does not relieve the elected official from complying with the deadlines and other requirements under FOIA. If the elected official or appointed official decides to allow Administration to administer their FOIA requests, they agree to adhere to the policy and procedures set forth in this Policy.

V. PUBLIC RECORDS GENERALLY

A. Public Records Under FOIA

A “public record” is any record containing information relating to the conduct of government business, which is prepared, owned, used, in the possession of, or retained by a public body. This includes, but is not limited to, emails, text messages, handwritten notes, reports, drafts, letters, spreadsheets, contracts, calendars, audio files, and photographs.

It is the County’s possession of a record, not its subject matter or form, which determines whether a record is considered a public record.

B. Records Not Subject to FOIA Policy

Requests for public records in the custody of the following public bodies, among others, are not in the possession of Clarendon County and are therefore not covered by this Policy:

1. Clarendon County School District
2. Third Circuit Solicitor’s Office

C. Access to FOIA Requests and Records

The County is responsible for receiving and maintaining FOIA requests and the documents associated with FOIA requests. Clarendon County employees and staff members shall not access the FOIA database or any documents associated with a FOIA request that do not require their attention.

This Section is not applicable to public bodies who are not covered by this Policy.

D. Communication Following a FOIA Request

Following the receipt of a FOIA request related to, but not limited to, an elected official, County employee, or confidential information, administration staff will communicate the FOIA request to the County Administrator. Administration may, at its discretion, inform the individuals related to the FOIA request of the information being requested.

VI. SUBMITTAL OF FOIA REQUESTS

A. Form of Requests

By law, any request for a public record submitted in writing to any member of Clarendon County government is a FOIA request and must be responded to in accordance with FOIA. Those wishing to submit a FOIA request may be encouraged or directed, but may not be required, to submit the request for public records to Administration by completing the online FOIA Request Form on the Clarendon County website: <https://www.clarendoncountygov.org/wp-content/uploads/2023/11/ClarendonCountyFOIAResult.pdf>

If a request is received by a department other than Administration, the receiver should adhere to the appropriate following response:

- a) Email. Immediately forward the entire request and all attachments to Administration at info@clarendoncountygov.org.
- b) Mail or Delivery Service. Stamp or mark the envelope with the date it was received and forward everything via interdepartmental mail to "Administration."
- c) Phone. Individuals seeking information regarding FOIA requests by phone should be transferred to 803-435-0135.
- d) In Person. Either direct the requester (1) to complete the form on the website; (2) to email the request to info@clarendoncountygov.org; or (3) call 803-435-0135.

B. Receipt Date/Time

The processing time for a FOIA request begins on the day the request is received, except for requests received outside of normal business hours. Requests received 4:30 p.m. or later on a business day, on weekends, or on holidays are considered received the next business day.

C. Content of Requests

Requestors are encouraged to provide as much specificity as possible to ensure the County can identify and locate the requested records. If a request(s) is not sufficiently specific or is overly broad, Administration should contact the requester within five (5) days to request additional information or clarification.

D. Responses to Requester

In accordance with the South Carolina Freedom of Information Act, Clarendon County has ten (10) business days (excepting Saturdays, Sundays, and legal public holidays) to determine if the information requested is publicly available under the FOIA and whether or not a fee is required.

Before the end of the ten (10) day response period a written determination (the "Initial Determination") should be sent to: (1) acknowledge the receipt of the request; (2) confirm the request was specific enough to obtain records; (3) provide information about estimated fees and costs; (4) convey whether a 25% deposit is required; and (5) provide a date, time, and place the records will be available to be inspected if an inspection is requested.

E. Deposit Requirement

Following an assessment by Administration and/or the County Attorney, if the cost associated with the request is likely to exceed \$25.00, a 25% deposit shall be required before the request is fulfilled. When a deposit is required, the 30-calendar day response period does not begin until the required deposit is received.

Payment is required in full before the public records are released to the requestor.

VII. OBTAINING RECORDS

Within 10 business days of the original request (or 20 business days if the request includes any records more than 24 months old), the FOIA specialists must provide an Initial Determination to the requester with their findings. Where feasible and efficient, the Initial Determination may inform the requester of the fees and costs associated with the request and instructions regarding the payment of fees and costs and for receiving the records. Otherwise, the Initial Determination should contain that information set forth at Section IV(D).

The records must be made available within 30 calendar days (or 35 days for records more than 24 months old) following the receipt of a deposit or payment of the estimated full amount.

A. Department Responsibilities

Following a request from Administration for records, each department representative must analyze the request to confirm if the requested documents pertain to that department. If so, an exhaustive search of its files must be completed in order to determine any and all documents that fulfill the broadest sense of the request. If the request does not pertain to that department or if no documents were found in response to the request, the department representative provides a statement as such, which is later reported to the requester.

B. Elected Officials

All requests for records on elected officials' personal devices or accounts, most notably emails on non- @clarendoncountygov.org accounts, must be submitted directly to the elected official. Clarendon County Administration does not own, operate, or have access to these accounts or devices, nor can it compel elected officials to produce records found therein.

VIII. FOIA EXEMPTIONS

FOIA contains discretionary exemptions under which public records may be withheld, as well as mandatory exemptions. If the applicability of an exemption is uncertain the County Attorney shall be consulted.

A. Duty to Redact

Under FOIA, the County may not withhold public records in their entirety because of an exemption. The County is obligated to produce the records with the exempt material redacted,

unless the entire record falls within a required exemption as provided for in Section VIII(B) of this Policy. All records in response to a FOIA request shall be submitted by the applicable department to Administration or, when appropriate, the County Attorney in their entirety without redactions.

B. Required Exemptions

Certain record must be withheld from disclosure in its entirety when a federal or South Carolina law requires that the record is exempt from disclosure. Records which are not public record under FOIA and are exempt from disclosure entirely include:

- (1) income tax returns;
- (2) medical records;
- (3) hospital medical staff reports;
- (4) scholastic records;
- (5) adoption records;
- (6) records related to registration and circulation of library materials to the extent they identify library patrons;
- (7) information relating to security plans;
- (8) the identity or information tending to reveal the identity of any individual who in good faith makes a complaint or otherwise discloses information which alleges a violation or potential violation of law or regulation to a state regulatory agency;
- (9) other records which by law are required to be closed to the public.

No department should make the decision to withhold records without consulting Administration or the County Attorney.

C. Employee Personnel Files

Clarendon County employee personnel files (“Personnel File”) may be released in accordance with this Section. A Personnel File may include “information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy.” S.C. Code Ann. Sec. 30-4-40. Specifically, documents including, but not limited to, drivers licenses, information about spouse and children, personal phone numbers, personal email addresses, resumes, health insurance, benefit packages, employee reviews, and resignation letters will be redacted in order to adhere to FOIA law and protect the personal privacy of Clarendon County employees.

D. Architectural Plans and Surveys

Architectural plans are protected by federal law, and under SC Code 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, except as otherwise provided by Section 30-4-40, or other state and federal laws.” Pursuant to the aforementioned SC Code Section, the request for architectural plans are exempt or are redacted accordingly.

Surveys shall not be released, copied, or distributed. The County shall allow for individuals to view a survey upon request.

E. Video and Audio Records

Video and audio recorded within any building owned or occupied by Clarendon County are for security purposes and copies will not be released. Matters exempt from disclosure, S.C. Code Ann. Sec. 30-4-40.

F. Release of Exempt Records or Documents

Nothing in this Section is to conflict with, or supersede, any other Clarendon County policy relating to the maintenance or release of records or documents. If this Section does conflict with any other Clarendon County policy, then the other policy shall be followed.

G. Prohibition on Commercial Solicitation Use

Knowingly obtaining or using personal information obtained from the County for commercial solicitation is strictly prohibited. The measure employed by the County to ensure that no record is used for commercial solicitation purposes shall be to deny requests for records under FOIA where the only reasonably perceptible use for the requested records by the requesting party is commercial solicitation. Upon denial of a request by the County, the requesting party is to be notified that it has the burden to demonstrate a purpose for which the requested records may be used that is not commercial solicitation. If Clarendon County provides the requested information, the requestor shall be required to sign a certification that includes the following statement:

I hereby certify that the records and information obtained from Clarendon County under the South Carolina Freedom of Information Act will not be used for the purpose of commercial solicitation. Pursuant to § 30-2-50 of the Code of Laws of South Carolina 1976, as amended, I acknowledge that I am prohibited from knowingly using public records obtained from Clarendon County for commercial solicitation. Violation of this law is punishable by law as a misdemeanor, resulting in up to a year in prison or a fine not to exceed \$500.

IX. CHARGES FOR THE PRODUCTION OF RECORDS

Pursuant to Section 30-4-30(B) of FOIA, the County Council has established the fee schedule below, which must at all times be made available on the County's website. In general, costs for staff time necessary to respond to a FOIA request may not exceed the prorated hourly salary of the lowest cost employee of Clarendon County who, based upon the advice of the County Administrator, has the training necessary to fulfill the request. The charges set forth below are no greater than, and in some instances may be less than, the actual cost to Clarendon County of searching for and making copies of requested public records. Costs shall not be charged for time spent examining records to determine whether they may be disclosed, however, costs will be charged for the time required to redact records, including any time spent by the County Attorney.

A. Labor Costs

Each department providing records in response to a FOIA request is responsible for providing an estimate of the number of hours required to complete the response to Administration, and the final number of hours actually required to complete such response. The number of hours charged for time spent by Clarendon County staff in producing the requested records will be rounded down to the nearest quarter hour. The labor cost will be calculated according to the Fee Schedule below.

B. Copying and Other Costs

When physical copies of the records are requested, the County shall provide the requestor the current rate of the County's copying cost per page. The charge for copying must reflect the actual costs incurred by the County. The charges in this Section do not include records that are provided electronically to the requester.

The County may charge for the actual cost of the medium used to provide the records including, but not limited to, thumb drive, CD, or DVD; and for the actual cost of postage and packaging associated with mailing the responsive records.

Copying and other costs will be calculated according to the Fee Schedule below.

Description	Charge
A minimum charge to pay costs for responding to all FOIA requests	[\$5.00] (paid upon receipt of records)
Charge per page for hard copy of records	[\$0.20]per copy
Charge for staff time to search, retrieve, or redact records *[Cost of redactions are based on one (1) minute per page requiring redaction]	[\$20.00] per hour
Charge for other media used to provide records	Actual cost of media to County
Deposit for anticipated or apparent staff time exceeding 5 hours	¼ of estimated costs
At the discretion of the County Administrator, any portion of the rate may be waived	

C. Cost Waiver

The County may waive the costs associated with a FOIA request when the cost of producing the response is less than \$25.00. A waiver shall not be applied when a requester, or anyone associated with the requester, submits a second request for public records within seven (7) calendar days of the first request, and the requests are of the same nature. The waiver as provided for in this Section is applied at the discretion of the County Administrator.

IX. INACTIVE FOIA REQUESTS

FOIA requests will be closed after 90 calendar days of inactivity. Inactivity is defined as a lack of a response from requesters to phone calls and/or correspondence by Administration or due to a lack of payment and will typically not be reopened.

After 30 days of inactivity, Administration will issue one courtesy reminder in an attempt to reopen communication with the requester. After 90 days, the requester must submit a new FOIA request, which will be processed normally.

Upon a request being inactive, the requestor surrenders any deposit, and the deposit may not be used towards any future FOIA requests.



Statement of Commercial Solicitation and Indemnity Agreement

Contact Information:

Address

Telephone Number

Email Address (if available)

I, _____, being first duly sworn on oath says: (please initial)

_____ I am the individual requesting the information.

_____ I am representing _____, as the _____
Name of Corporation/Organization *Title of Position*

I hereby affirm that the information requested from Clarendon County pursuant to a Freedom of Information Act request, **will not be used for commercial solicitation nor knowingly sold or given to secondary or tertiary parties** who intend to use the information for Commercial Solicitation as defined in Section 30-2-10 of the *South Carolina Code of Laws* (2017, as amended). I hereby agree to completely indemnify Clarendon County against any claim, by any individual, if such record or document is used for Commercial Solicitation purposes.

Requestor's Signature

To Be Completed by Clarendon County

Date Statement Received _____ Receipt Acknowledged by: _____