

COLLEGE of CHARLESTON

OFFICIAL POLICY

5.1

FOIA REQUEST POLICY

3/20/2018

Policy Statement

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

Policy Manager and Responsible Department or Office

Office of Legal Affairs

Purpose/Reason for the Policy

I. POLICY STATEMENT:

The College of Charleston, as a state entity and public body, seeks to comply with all provisions and exemptions contained within the South Carolina Freedom of Information Act ("FOIA"), as codified within sections 30-4-10 et. Seq. of the Code of Laws of South Carolina, (1976) as amended. The purpose of this policy is to provide guidance regarding the College's procedure for responding to requests for records which are "public records" as defined within the South Carolina Freedom of Information Act. The Office of Legal Affairs will examine all FOIA requests to determine whether they are subject to exceptions, such as those seeking information for commercial solicitations. The College will then make a good faith effort to make available documents that are not subject to a FOIA exception, within the allowed time frame established by law. Calculations of time shall be pursuant to the terms as set forth within the South Carolina "Freedom of Information Act", as amended

The office of Legal Affairs is available to provide guidance and advice to College officials, employees and administrative divisions, in their official capacity, which receive requests for public records under FOIA.

This policy applies to all faculty and staff members of the College of Charleston and supersedes any prior policies which may be in effect.

Caution should be used to avoid disclosing any confidential or nonpublic information, such as protected health care information, information subject to privilege, information subject to a privacy exception, and/ or student records protected by FERPA.

Individuals about whom requests have been made, may be notified of the requests and of the information released, by the Office of Legal Affairs.

POLICY: Parties or entities seeking public records under FOIA from the College of Charleston, or any of its Departments or sub-entities, are asked to submit a dated request in writing, to avoid disputes regarding exactly what is being requested, the date that it is requested, and to assure that the documents provided are properly responsive to the request.

A. Requests:

All FOIA requests received shall be directed to the Office of Legal Affairs for formal response, although other offices and divisions may be asked to gather the documents being requested from the College.

The Office of Legal Affairs shall examine the public records request and shall respond within the time frame as set forth under the South Carolina Freedom of Information Act, as amended, regarding said request. The response may consist of copies of the materials requested, a denial or partial denial of the request with explanation of the reasons for the denial, or an acknowledgement of receipt and an estimate of the costs associated with

making the materials ready for production or inspection, along with a request for a 25% deposit, as allowed by law. Requests should be handled in the course of regular office business hours, with a goal of responding within the time set forth under the Freedom of Information Act, if possible. If it is not possible to provide the records requested within the time frame under the Act, the requestor will be provided a written response within that time frame advising them of a reasonable time estimate as to when the documents can be produced and a request for an extension. If no extension can be agreed upon, the parties are free to seek the interventions as referenced within the Act. The documents will be forwarded to the requestor upon becoming available for distribution, provided that any advance payment required by the College has been paid and received.

B. Costs:

The College may provide an estimate of the costs for providing the public records and may require, prior to commencing work, advance prepayment of 25% of the estimate regarding the cost of fulfillment, including redaction, prior to search and production. On matters where charges are to be assessed, the following base rates will be applied, and may be amended and updated without prior notice, to reflect the actual costs incurred by the College in responding to such requests:

- a. A search, retrieval and processing fee, per request, as allowed by statute, to convert paper documents into electronic form for transmission;
- b. A photocopy fee of 25 cents per page for standard, letter-sized, copies, where paper copies are provided. (Note: actual costs may be charged for special copy and reproduction needs, such as photos, ledger size documents, DVDs, CDs, thumb drives, or blue prints);
- c. The actual costs of the lowest paid employee duly qualified to locate, review, redact, if necessary, and produce the records requested, excluding review to legally determine if the documents are subject to disclosure. This charge shall be calculated by multiplying the hourly rate of the employees by the amount of time necessary to locate, review, redact, if necessary, and produce the final documents.
- d. Actual full cost of postage and delivery;
- e. If the FOIA request requires development of a computer program or running an existing program to respond, the charge would be based on the costs associated with the actual cost of the process and development of the program.
- f. Charges may be assessed for both photocopying and the associated/ administrative staff time, for photocopying in excess of 25 pages.

g. In its sole discretion, the College may elect to waive minor production costs regarding responses that the College determines are very small or inconsequential production requests.

All costs related to providing responses to FOIA requests shall be billed, collected, and retained by the College. A 25% deposit of the cost estimated by the College, in its sole discretion, may be required in advance, prior to searching for and copying or producing the records. If prior payment is required, the search for records will not be initiated until payment has been paid and received by the College

After the project is completed the final response to the request will not be released until full payment of the remaining balance, after credit for the 25% deposit, has been made.

All fees are payable by check or money order made payable to the College of Charleston and delivered to: College of Charleston, Office of Legal Affairs, 66 George Street, Suite 302 Randolph Hall, Charleston, S.C. 29424.

Internal Procedure:

All FOIA requests shall be forwarded from the office receiving the request to the Office of Legal Affairs for review, immediately upon receipt., noting upon the cover sheet the date and time received. As FOIA requests are time critical, time is of the essence, and the prompt forwarding of requests, within two (2) business days of initial receipt of the request, is required. After the involved department timely gathers the records and information requested, once the request has been approved by the Office of Legal Affairs, all responsive materials shall immediately be forwarded to the Office of Legal Affairs for final review and redaction, if necessary, prior to a formal response being generated. All materials must be forwarded to the Office of Legal Affairs at least five (5) working days prior to any final deadline date, to allow sufficient time for document review and redaction, if necessary, prior to release. Responses may be made by e-mail, fax, or U.S. mail and may be in either paper or electronic format. If a request is made electronically, it is acceptable to respond in the same format.

Information Considered "Public Records":

For purposes of the South Carolina Freedom of Information Act, as amended a "Public Record" may consist of all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics, prepared, owned, used, in the possession of or retained by a public body, subject to further definition and restriction as set forth within Section 30-4-20 (c), S.C. Code Ann., as amended.

Exceptions/Matters Considered Lawfully Exempt From Disclosure:

No information obtained pursuant to the South Carolina Freedom of Information Act from the College may be used for commercial solicitation, as outlined within section 30-2-50, S.C. Code Ann., as amended.

Records considered exempt from disclosure under the Act, include those records which by law are required to be closed to the public, or are otherwise exempted directly by the

provisions of the South Carolina Freedom of Information Act. Such records include, but are not necessarily limited to the following, pursuant to Section 30-4-40, S.C. Code Ann., as amended.

- a. All legally privileged documents, including attorney work product, attorney-client correspondence and communications, documents prepared in anticipation of litigation and any other documents that, if produced, would violate the confidentiality of the attorney- client relationship;
- b. Student education/scholastic and related records, subject to FERPA requirements;
- c. Trade secret data and information, work products and paid subscriber information, as defined within section 30-4-40 of the South Carolina Code Ann., as amended;
- d. Information of a personal nature, where public disclosure thereof would constitute unreasonable invasion of personal privacy, as defined within section 30-4-40 of the South Carolina Code Ann., as amended;
- e. Certain records of law enforcement and public safety activities, as defined within section 30-4-40 of the South Carolina Code Ann., as amended;
- f. Matters specifically exempted from disclosure by statute or law;
- g. Documents of and documents incidental to proposed contractual arrangements and documents incidental to proposed sales or purchases of property, subject to limitations contained within section 30-4-40 of the South Carolina Code Ann., as amended;
- h. Certain salary and compensation information as defined within section 30-4-40 of the South Carolina Code Ann., as amended;
- i. Memoranda, correspondence, documents, and working papers relative to efforts or activities of a public body to attract business or industry to invest within South Carolina, as defined within section 30-4-40 of the S.C. Code Ann., as amended;
- j. Information relative to the identity of the maker of a gift to the College of Charleston as a public institution, if the maker specifies that his or her making of the gift must be anonymous and that his or her identity must not be revealed as a condition of making the gift. With respect to gifts, only information which identifies the maker may be exempt from disclosure. If the maker of any gift or any member of his or her immediate family has any business transaction with the recipient of the gift within three years before or after the gift is made, the identity of the maker is not exempt from disclosure, pursuant to section 30-4-40 (11), S.C. Code Ann., as amended;

- k. All materials, regardless of form, gathered by a public body during a search to fill an employment position, except materials relating to the final three or fewer applicants, subject to certain exceptions, as defined within section 30-4-40 (13), South Carolina Code Ann., as amended;
- l. Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher education in the conduct of or as a result of study or research on commercial, scientific, technical, or scholarly issues as defined within section 30-4-40, South Carolina Code Ann., as amended;
- m. Library circulation and registration records as defined within section 30-4-20, S. C. Code Ann., as amended; and
- n. Personal information obtained for commercial solicitation pursuant to section 30-2-50, South Carolina Code Ann., as amended.
- o. Medical and counseling records.

STATUTORILY MANDATED LANGUAGE:

Reference to the following should be included in responses to FOIA requests:

“Section 30-2-50 of the Code of Laws of the State of South Carolina, provides that no person or private entity shall knowingly obtain or use any personal information obtained from a public body for any commercial solicitation directed to any person in this state. The College of Charleston, as a public entity, gives notice to you, as a requestor of records from this entity, that obtaining or using these public records for commercial solicitation, as set forth above, is prohibited. Any person who knowingly uses public records for commercial solicitation, as referenced within Section 30-2-50, S.C. Code Ann., as amended, 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. (Please see S.C. Code of Laws Section 30-2-10, et. seq. for further information.)

Departments/Offices Affected by the Policy

All Departments

Procedures Related to the Policy

Related Policies, Documents or Forms

Review Schedule

Issue Date: 9/28/2015
Date of Policy Revision: 3/20/18

Next Review Date: 3/20/22

POLICY APPROVAL

(For use by the Office of the Board of Trustees or the Office of the President)

Policy Number: 5.1

President or

~~Chairman, Board of Trustees~~

Alan E. McLaughlin

Date: 3-20-18