



ALAN WILSON
ATTORNEY GENERAL

July 6, 2015

The Honorable Joe Owens
Mayor of West Columbia
P.O. Box 4044
West Columbia, SC 29171-4044

Dear Mayor Owens:

Attorney General Alan Wilson has referred your letter dated May 14, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue:

The legality of city council meetings alleged to be illegal pursuant to the South Carolina Freedom of Information Act

Law/Analysis:

By way of background, it is this Office's understanding what you are asking about regarding the legality of meetings concerns factual determinations which this Office will not make in this situation. We will defer to a court's determination of the facts in the situations you present. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)). What we can do is recite the law regarding some of your concerns about the meetings that took place.

Let us review the South Carolina Freedom of Information Act (hereinafter "SC FOIA") as it has had some recent changes. As a reminder, the purpose beyond South Carolina's Freedom of Information Act is clearly stated in the statute, which reads:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

S.C. Code § 30-4-15 (1976 Code, as amended). As you are aware, in order for the SC FOIA to apply, it must meet the definitions within the statute. A meeting is defined as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code § 30-4-20(d). A quorum is defined as "a simple majority of the constituent membership of a public body" unless it is defined otherwise by law. S.C. Code § 30-4-20(e). As you reference in your letter, the SC FOIA requires every meeting of every public body to be open to the public

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unless it is exempted pursuant to § 30-4-70. S.C. Code § 30-4-60. In the Lambries case, our State Supreme Court held that Saluda County Council could amend its agenda even during the council meeting without violating the SC FOIA. Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014). Moreover, in that case, our South Carolina Supreme Court case stated:

There is no common-law right to attend the meetings of government bodies, so many jurisdictions have legislated public meeting statutes, variously referred to as, *inter alia*, “open meeting laws” or “Sunshine Acts.” *See generally* 4 Eugene McQuillin, *The Law of Municipal Corporations* § 13:10 (3d ed. rev.vol.2011); 2 Am.Jur.2d *Administrative Law* § 84 (2004).

In South Carolina, FOIA governs the public disclosure of the activities of public bodies, and it has provisions pertaining to public meetings as well as documents. S.C.Code Ann. §§ 30-4-10 to -165 (2007 & Supp.2013). The essential purpose of FOIA is to protect the public from secret government activity. *Wiedemann v. Town of Hilton Head Island*, 330 S.C. 532, 500 S.E.2d 783 (1998).

In declaring FOIA's purpose, the General Assembly has found “that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.” S.C.Code Ann. § 30-4-15 (2007). “Toward this end, [FOIA's] provisions ... must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.” *Id.*

Lambries v. Saluda County Council, 409 S.C. 1, 8-9, 760 S.E.2d 785, 788-789 (2014). However, as an aside, the SC FOIA was amended this year by the South Carolina legislature. 2015 S.C. Acts 70, R99, S11. It clarified the requirements for the agenda for a meeting and when an agenda could be amended. *Id.*

This Office has issued numerous opinions on the SC FOIA which may be helpful to your situation. *See, e.g., Op. S.C. Att’y Gen.*, 2015 WL 1093149 (February 25, 2015). In some of our opinions we have previously stated concerning FOIA questions that “each situation would have to be judged on its own facts.” *Ops. S.C. Att’y Gen.*, 2014 WL 3965780 (August 5, 2014); 2004 WL 2451475 (October 7, 2004); 2002 WL 31341811 (August 19, 2002). In a previous opinion this Office has suggested asking in regards to an illegal meeting: was there any prejudice to anyone as a result of the action; was the violation of FOIA only a technical violation; has the body taken any action to rectify the action; and what relief might a court provide to remedy the alleged violation? *Op. S.C. Att’y Gen.*, 1997 WL 569093 (August 20, 1997). However, if you feel there is a SC FOIA violation, “[a]ny 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...” S.C. Code § 30-4-100 (1976 Code, as amended).

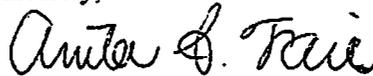
Our State courts have addressed other SC FOIA lawsuits concerning meetings. Our court held it may grant equitable relief for a FOIA meeting violation, which may include the invalidation of a vote. Piedmont Public Service Dist. v. Coward, 319 S.C. 124, 459 S.E.2d 876 (1995), rehearing denied, cert. granted, *aff’d* 324 S.C. 239, 478 S.E.2d 836. However, we have previously opined that any such violation is voidable by a court, not void ab initio. *Op. S.C. Att’y Gen.*, 1997 WL 569093 (August 20,

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violation is voidable by a court, not void ab initio. Op. S.C. Att'y Gen., 1997 WL 569093 (August 20, 1997). Nevertheless, there is a statute of limitations in bringing an application to remedy a violation or alleged violations of the SC FOIA. S.C. Code § 30-4-100. The statute of limitations for bringing such an action is one year from the latter of either the violation or a public vote in public session. Id.

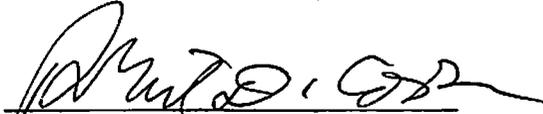
Conclusion: This Office will not be making a factual determination in your situation but hopes our overview of the South Carolina Freedom of Information Act will assist you in your concerns regarding the meetings. This Office generally construes the Freedom of Information Act broadly and believes in resolving doubt in favor of openness. Any such meetings in violation or in alleged violation of the South Carolina Freedom of Information Act should be addressed by a circuit court. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General