

1978 WL 35018 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 7, 1978

***1 Re: 1978 Freedom of Information Act (F.O.I.)**

Mr. John Hamilton
Director
S. C. Aeronautics Commission
Columbia Metropolitan Airport
P. O. Box 1769
Columbia, South Carolina 29202

Dear John:

The 1978 General Assembly, in the closing days, adopted a new 'Freedom of Information Act' which repealed the 1972 original Act and the 1976 amendment. A review of the new Act indicates that no major area of operation for the Aeronautics Commission may be affected with the exception of an 'executive session' or 'closed session' of the Commission held for the purpose of an 'administrative briefing.' The Act clearly provides for executive session items for discussion of personnel matters, 'receipt of legal advice,' proposed contractual arrangements, investigative proceedings 'regarding allegations of criminal misconduct' and other items as in the past. (This last item regarding allegations of criminal misconduct can be readily applied to any discussion of compliance with the new Financial Responsibility Act to be administered by the Aeronautics Commission with respect to certain aeronautical accidents.)

It is the area of 'administrative briefing' that is the major change. The wording of the new Act is clear: 'Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings . . .' (Emphasis added.) (Emphasis added.)

The Act specifically states that no budgetary matters shall be discussed in a closed 'administrative briefing' session 'except as otherwise provided by law.' The applicable subsection concludes that 'no regular or general practice or pattern of holding closed meetings (for administrative briefings) shall be permitted.'

About one half of the new Act deals with records within a department or agency, and there appears to be no major change in present procedures necessary for the Aeronautics Commission except as relates to records required under the new insurance reporting law relative to registration of aircraft, and the new Financial Responsibility Act applicable to accidents involving property damage in excess of \$500.00, or personal injury or death. The new F.O.I. Act contains specified items exempt from disclosure and a 'catch-all' which provides that 'matters specifically exempted from disclosure by statute or law' would continue to be exempt. This would cover the investigative reports required under the new Financial Responsibility Act. The new F.O.I. Act further provides that minutes of the Commission meetings, except the minutes of the executive sessions, shall be public. Finally, 'electronic meetings' of the Commission cannot be held for the purpose of 'circumvention of the spirit of requirements of this Act . . .'

A new item in the Act is the requirement that at the beginning of each calendar year 'public notice' shall be given of the regular meeting times and places of commissions and boards. Procedure to comply with this requirement can be discussed at a forthcoming commission meeting since the applicable section does not require public notice except at the

beginning of the next calendar year. In addition, at least twenty-four hours prior to each Commission meeting which is regularly scheduled, a notice of the meeting, including a listing of the agenda items, shall be posted at the agency or Commission office. (A copy of the agenda index for the August meeting should, therefore, be posted at least twenty-four hours in advance of said meeting.) Another section of the new Act calls for public bodies to 'make an effort to notify local news media or such other news media as may request notification of the meetings of your Commission. (I suggest sending a notice of the August meeting with a copy of the agenda index to The State and Record newspapers in advance of the August meeting.)

*2 For information of the Commission and yourself, a copy of the new Act as finally adopted by the General Assembly is attached hereto. I recommend sending a copy of this letter, together with a copy of the Act, to all members of your Commission at the earliest opportunity, in order to apprise them of the new Freedom of Information Act in advance of the August meeting.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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