

**SOUTH CAROLINA DEPARTMENT OF COMMERCE
FREEDOM OF INFORMATION REQUESTS
POLICY, FAQs & FEE SCHEDULE**

I. POLICY STATEMENT

At the Department of Commerce, we take public accountability and disclosure seriously and always endeavor to comply with the letter and spirit of the South Carolina Freedom of Information Act, S.C. Code Section 30-4-10, et seq. (FOIA) (<https://www.scstatehouse.gov/code/t30c004.php>) because the public has a right to know how public dollars are spent, whether in pursuit of economic development or the operation of state government generally. We also take very seriously our obligation to protect the private proprietary and competitive business information of our company clients and will continue to do so within the limits established by South Carolina law. In keeping with these dual obligations of public accountability and protection of private details that are not needed to reveal public costs, the Department of Commerce will ensure that requesters receive the information sought that is not exempt from public disclosure.

II. FREQUENTLY ASKED QUESTIONS

A. How Do I Submit a FOIA Request?

Requests must be in writing by email or letter, which may be mailed, emailed, hand-delivered or faxed.

B. Where Do I Send a FOIA Request?

To ensure prompt receipt, requests should be sent to either of the following employees:

Karen B. Manning, Chief Legal Counsel (kmanning@sccommerce.com)
Kelly Coakley, Director of Marketing & Communications (kcoakley@sccommerce.com)
South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

Requests not sent to one of these employees will be redirected to Ms. Manning or Ms. Clark upon receipt.

C. Are There Any Charges for a FOIA Request?

Our state's FOIA law allows public bodies to charge reasonable fees associated with responding to FOIA requests. The Department of Commerce's standard fees are reflected in the Fee Schedule set forth in Section III below. However, the Department of Commerce will endeavor to respond to FOIA requests free of charge when disclosure of the information requested primarily benefits the public and when requests are not unduly burdensome. Fees will NOT be charged for the following:

1. Search, retrieval, and scanning of public records that require one (1) hour or less of staff time.
2. Redaction of public records.
3. Copies of 50 pages or fewer.
4. Electronic copies, which will be provided whenever practicable.

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When fees do apply, a deposit not to exceed 25 percent of the total reasonably anticipated cost to make the public records available may be required prior to searching for or making copies of responsive records. The full amount of the total cost must be paid at the time of the production of the responsive public records.

D. How Can I Reduce the Cost of a FOIA Request?

FOIA requests that are vague and/or extremely broad often capture significant amounts of information that requesters are not seeking and can be costly for the agency and requesters to search for and disclose. Identifying information sought with as much specificity as is known will reduce the cost of a FOIA request. The Department of Commerce will work with requesters to reduce costs by narrowing the scope of requests and encourages requesters to contact Ms. Manning (803.737-1603) or Ms. Clark (803.737-1998) for assistance.

E. Will the Agency Create a List or Spreadsheet in Response to a FOIA Request?

Public bodies are not required to create a public record that does not exist. However, the Department of Commerce may create a list or spreadsheet in response to a FOIA request if it reduces the cost of response. Fees may apply if creation of the list or spreadsheet requires more than one hour of staff time.

F. How Long Will It Be Before I Get Information After Filing a FOIA Request?

The Department of Commerce will notify a requester of the availability of records and a cost estimate, including a 25 percent deposit (if applicable), as expeditiously as possible, but no more than 10 business days after receipt of the request. If the records sought are more than 24 months old, the Department of Commerce will respond in 20 business days. Whenever practicable, responsive public records will be provided at the same time as the initial response, but no more than 30 calendar days after the initial response (or receipt of a deposit) or 35 calendar days for records older than 24 months. Deadlines may be extended with the consent of the requester. If a request is unintelligible, vague or overbroad, the Department of Commerce will contact the requester to better ascertain the subject matter sought and reduce costs.

G. What Types of Information are Exempt from Disclosure Under FOIA?

The Department of Commerce's primary mission is to recruit private taxable investment and job creation to the state. When the Department of Commerce engages with prospective companies in the recruitment process, typically those interactions are pursuant to a nondisclosure agreement with the company (or the company's consultant) that requires that the agency maintain the confidentiality of the company's potential location or expansion plans (including the fact that the discussions are occurring) as well as the company's confidential business information. South Carolina's FOIA law provides broad exemptions related to the economic development recruitment process and requires limited disclosure when projects accept incentives and locate or expand in our state. Based on available exemptions (or other applicable statutory provisions), when requesters are seeking information regarding economic development recruitment and incentives, the following categories of public records will be withheld:

1. Working Papers Related to Private Company Recruitment (§30-4-40(a)(9))

This exemption covers all information related to recruitment of a private company to locate or expand in South Carolina. However, once companies commit to locate or expand in our state, the final incentive

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agreement is subject to public disclosure after the project announces, or if a project chooses not to announce, once the incentive agreement has been finalized and the project is moving forward.

2. Proposed Contracts & Incidental Documents (§30-4-40(a)(5))

This exemption covers information related to proposed contracts, including incentive agreements. Once the agreements are final, documents that are incidental to those agreements are also subject to disclosure. Accordingly, the Department of Commerce when requested, will disclose applications for discretionary incentives, and cost benefit analyses related to those incentives.

3. Confidential Information Provided for Economic Development (§30-4-40(a)(5)(c))

Even after contracts become final, confidential business information of a company will be withheld or redacted. Typically, information withheld would be valuable to a company's competitors (e.g., average or individual wages, investment breakdowns, health plans, financial information, production volumes, etc.).¹

4. Status or Amount of Tax Credit Claims (§12-54-240)

The status or amount of job development or job tax credit claims is confidential taxpayer information. Unauthorized disclosure of confidential taxpayer information results in fines and jail time, and accordingly, will be withheld.

5. Private Company Employee Contact Information (§30-4-40(a)(2))

Names and contact information for private company employees will typically be withheld from otherwise nonexempt public records absent a public interest justification for disclosure of that information.

III. FEE SCHEDULE

- Labor Fee (for search, retrieval, and scanning).....\$45.00/hr
- Copies.....\$.10/page
- Color Copies.....\$.25/page
- Postage.....Actual

¹ Company trade secrets will also be protected under S.C. Code §30-4-40(a)(1).