



1. Policy Statement

At the Department of Commerce, we take public accountability and transparency 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 South Carolina companies and will continue to do so within the limits established by South Carolina law and this policy. 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 or is required to be disclosed pursuant to this policy.

2. 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)
Alex Clark, Director of Marketing & Communications (aclark@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:



South Carolina Department of Commerce

FREEDOM OF INFORMATION REQUESTS

POLICY, FAQs & FEE SCHEDULE

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.

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 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. Generally, and subject to other exemptions where applicable, public records related to the implementation of a project pursuant to a final incentive agreement, including records related to the expenditure of public funds, are nonexempt.

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))

a. General Rule

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

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



South Carolina Department of Commerce

FREEDOM OF INFORMATION REQUESTS

POLICY, FAQs & FEE SCHEDULE

b. Average Wage Exceptions

Notwithstanding the foregoing, except in Tier IV counties, for any project approved on or after January 1, 2022 that has average wages of less than \$15.00/hour after excluding the top five percent of full-time positions to be created at the project, the Department of Commerce will confirm in response to a FOIA request related to discretionary incentives that such project has average wages (excluding the top five percent of positions) that are less than \$15.00/hour. The Coordinating Council shall review the average wage threshold in this disclosure requirement at its first quarter meeting to ensure the threshold appropriately reflects updated average county per capita wages as published annually by the South Carolina Department of Revenue.

Additionally, for any project approved on or after January 1, 2023, the Department of Commerce will disclose in response to a FOIA request, the average wage for the jobs on which a company claims job development credits.

c. Aggregate Average Wage Reporting

Aggregate average wage information included in job development credit quarterly reports submitted electronically starting in 2022 will be collected and reported in the annual report of the South Carolina Coordinating Council for Economic Development based on incentive approval category² starting with the report due on or before May 15, 2023.³

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))

Contact information for individuals employed by or on behalf of a private company will be withheld from otherwise nonexempt public records. Notwithstanding any other FOIA exemption that may apply, Commerce will not invoke the personal, privacy exemption under FOIA §30-4-40(a)(2) to withhold the identity of corporate executives and lawyers communicating with public officials concerning an economic incentive deal.

² For purposes of job development credits, qualifying businesses are approved based on the categories set forth in S.C. Code Section 12-6-3360(A) and include: manufacturing, distribution, research and development, processing, corporate office, certain tourism facilities, qualified service related facilities, extraordinary retail establishments, service and retail in Tier IV counties, agricultural packaging and professional sports teams.

³ A test group of companies claiming job development credits will be required to file quarterly reports electronically using a newly developed system starting in the first quarter of 2022 with the remainder of companies claiming credits being phased in over the remaining quarters. Full electronic reporting will be in effect for 2023.



H. Can I Find Out Whether a Company Has Performed as Promised?

1. Job Development Credits

Whether a company is claiming job development credits is confidential taxpayer information pursuant to S.C. Code Section 12-54-240. See Section G.4. above. However, companies approved for job development credits are not eligible to claim the credits unless they certify to the Department of Revenue that the company has met its minimum job and investment commitments. Thereafter, companies must maintain the committed jobs and investment and may not claim job development credits for any quarter in which the company does not maintain the minimum requirements.

2. Grants

Companies that benefit from discretionary grants awarded to counties are required to enter into Performance Agreements with the South Carolina Coordinating Council for Economic Development and the county Grantee. In its annual report, the Coordinating Council lists all companies that have met performance requirements during the prior year. Any company that does not meet performance requirements as set forth in its Performance Agreement will be required to repay a pro rata portion of any grant funds disbursed pursuant to the terms of the Performance Agreement; provided, however, that the Coordinating Council may negotiate and approve modified terms of repayment (or conclude performance has been satisfied) at its discretion when actual performance achieved or other facts and circumstances justify the modified terms and such modification is in the best interest of the State of South Carolina. Any repayments or modifications to terms of performance required will be disclosed in the annual report of the Coordinating Council. Additionally, Performance Agreements and performance repayments are subject to disclosure pursuant to FOIA.

3. Fee Schedule

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