



ALAN WILSON  
ATTORNEY GENERAL

February 16, 2011

The Honorable John Rumford  
Mayor  
Town of Fort Lawn  
Post Office Box 37  
Fort Lawn, South Carolina 29714-0037

Dear Mayor Rumford:

We received your letter requesting an opinion of this Office concerning the legal requirements with regard to the retention of certain municipality records currently being stored by the Town of Fort Lawn. Specifically, your letter states that the records retained include minutes from town council meetings and financial records and that you wish to “eliminate” these records. This opinion addresses the relevant statutes, regulations, and former opinions of this Office with regard to this issue.

### **Law/Analysis**

As we have stated in prior opinions, “the public policy of this State is to preserve, rather than destroy public records.” Ops. S.C. Att’y Gen., August 25, 1997 and May 21, 2007. The Public Records Act (S.C. CODE ANN. § 30-1-10 - 180) governs the custody and preservation of public records. Public records include “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.” S.C. CODE ANN. § 30-4-20(c) (§ 30-1-10 states that “public record” has the meaning provided § 30-4-20(c), which is the definition section of the Freedom of Information Act). As we have previously noted, “city council clearly is a public body.” Op. S.C. Att’y Gen., May 21, 2007. Accordingly, as the Fort Lawn Town Council either prepared, owned, used, possessed, or retained the documents described in your letter, said documents are public records.

In South Carolina, the chief administrative officer of each agency, subdivision, or public body is the custodian of these records. S.C. CODE ANN. § 30-1-20. The custodian of said records is responsible for protecting the records.

The legal custodian of public records shall protect them against deterioration, mutilation, theft, loss, or destruction and shall keep them secure in vaults or rooms having proper ventilation and fire protection in such arrangement as to be easily accessible for convenient use.

S.C. CODE ANN. § 30-1-70. Moreover, “[a] person who unlawfully removes a public record from the office where it usually is kept or alters, defaces, mutilates, secretes, or destroys it is guilty of a misdemeanor . . .” S.C. CODE ANN. § 30-1-30. In prior opinions we interpreted this provision as preventing the destruction of public records in the absence of specific guidance from the Legislature. Op. S.C. Att’y Gen., May 21, 2007.

The Public Records Act provides that the Department of Archives must establish and administer a “records management program directed to the application of efficient and economical management methods and relating to the creation, utilization, maintenance, retention, preservation, and disposal of public records.” S.C. CODE ANN. § 30-1-80. The Archives has established a general retention schedule for municipal records in accordance with S.C. CODE ANN. § 30-1-90(B). These schedules “contain minimum records retention periods for the official copy of the records” and apply regardless of the “physical format” of the records. S.C. CODE ANN. REG.12-601 (Supp. 2010) “Convenience, informational or duplicate copies are not governed by this regulation and may be destroyed when no longer needed for reference.” Id. Further, “[t]o destroy records in accordance with this regulation, municipal governments must complete and submit a report on records destroyed form to the Department of Archives and History after eligible records have been destroyed.” Id.<sup>1</sup> Moreover, “[b]efore disposing of public records under these general schedules, municipal governments should insure that the records have no further audit, legal, or fiscal value.” Id.

It would be beneficial for you to review the “General Retention Schedules for Municipal Records,” S.C. CODE ANN. REGS. 12-601- 611.11 (Supp. 2010), for familiarization and guidance as to the retention schedules of a variety of municipal records. Specifically, with regard to your question as to Town of Fort Lawn Council minutes, S.C. CODE ANN. REG. 12-604.2 (Supp. 2010), which is entitled “Council Minutes,” provides:

- A. Description: Record of proceedings at meetings of the municipal council which includes written descriptions of the financial and administrative business conducted. Information includes dates of meetings, names of council members present, claim approvals, petitions, bids, proposals, other matters discussed by or brought to the attention of the council, and attachments.

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These forms are available from the Department of Archives and History’s Division of Archives and Records Management. The phone number for the Department of Archives and History is 803-896-6100.

B. Retention: Permanent. Microfilm for security.

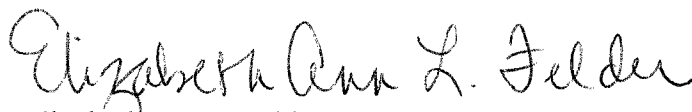
As to your second question regarding various financial records, this Office recommends that you review S.C. CODE ANN. REG. 12-605 (Supp. 2010). This regulation specifically addresses financial documents, including those detailed in your letter, such as purchase orders (REG. 12-605.8), receipts (REG. 12-605.13), check registers (REG. 12-605.9), bids (REG. 12-605.6), general ledgers (REG. 12-605.4), and various other financial documents.

In addition, S.C. CODE ANN. § 30-1-90(B) provides the option to “opt out of these general schedules and proceed pursuant to the provisions of subsection (A) in the establishment of specific records schedules.” Section 30-1-90(A) of the South Carolina Code provides for the creation of schedules to be approved of by both the Director of the Archives and the “governing body of each subdivision or the executive officer of each agency or body having custody of the records.”

### **Conclusion**

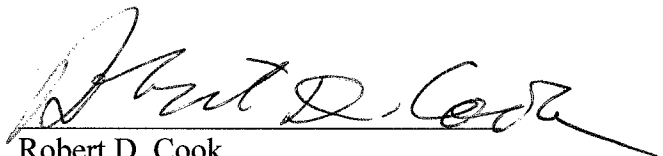
The records described in your letter constitute public records under the provisions of the Public Records Act. Thus, the Fort Lawn Town Council must comply with the provisions of this Act before “eliminating” any of the described records. The regulations discussed above provide detailed retention schedules for municipal documents, or, as discussed, the Council may “opt out” of said schedules in favor of complying with the provisions of Section 30-1-90(A) of the South Carolina Code. This statute provides for the creation of schedules to be approved of by both the Director of the Archives and the Fort Lawn Town Council.

Sincerely,



Elizabeth Ann L. Felder  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General