



ALAN WILSON
ATTORNEY GENERAL

August 26, 2019

Craig Witherspoon, Ed.D.
Superintendent
Richland One School District
1616 Richland Street
Columbia, South Carolina 29201

Dear Superintendent Witherspoon:

We understand from your letter to Attorney General Alan Wilson you seek an opinion of this Office concerning section 30-4-80(E) of the South Carolina Code (Supp. 2018). By way of background, you provide the following information as stated in your letter:

Recently, an individual made the following request: *“Please add me to your list to notify regarding times, dates, places and agenda of Richland County School District One Board public meetings including scheduled, rescheduled, or called Meetings, Work Sessions, Retreats and Committee Meetings.”*

Currently, we provide notice in accordance with § 30-4-80(A) of the South Carolina Code of Laws. Further, we understand the definition of a “meeting” as defined by the state Freedom of Information Act (FOIA) criteria. However, committee meetings have not been not [sic] considered a “meeting” as outlined in § 30-4-20(D) in that they do not require “convening of a quorum of the constituent membership of a public body.” Additionally, work sessions, retreats, and committee meetings may be treated as meetings but may be considered closed meetings as outlined in §30-4-70(a)(1-5).

Accordingly, you seek an opinion of this Office as to “whether ‘*Committee Meetings*’ should be considered a ‘meeting’ as defined by § 30-4-20(D) and whether such meetings would require notification in accordance with § 30-4-80(E), if they are not interpreted as meetings.”

Law/Analysis

The South Carolina Freedom of Information Act (FOIA) is contained in sections 30-4-10 *et seq.* of the South Carolina Code (2007 & Supp. 2018). In interpreting the provisions contained in FOIA, we employ the primary rule of statutory construction, which is to “ascertain

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and give effect to the intent of the legislature.” Kerr v. Richland Mem’l Hosp., 383 S.C. 146, 148, 678 S.E.2d 809, 811 (2009) (citations omitted) (internal quotations omitted). The Legislature aptly conveyed its intent in the preamble to FOIA, which states:

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 Ann. § 30-4-15 (2007). As our South Carolina Supreme Court stated in Brock v. Town of Mount Pleasant, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016), “The essential purpose of FOIA is to protect the public from secret government activity.” (citations omitted) (internal quotations omitted). “FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature.” Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001).

In order to answer your question as to whether FOIA applies to committee meetings, we must first consider whether a committee is a public body for purposes of FOIA. FOIA defines “public” body as

any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

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S.C. Code Ann. § 30-4-20 (2007) (emphasis added). This provision clearly states school districts are public bodies for purposes of FOIA. Furthermore, as the statute provides, any committee of a public body is likewise a public body for purposes of FOIA.

In Quality Towing, Inc., 345 S.C. 156, 547 S.E.2d 862, as cited previously, our Supreme Court considered the application of FOIA to a committee formed by the city manager for the city of Myrtle Beach to review proposals from wrecker services to provide towing services for the city. The Court conclusively determined the committee was a “public body” under section 30-4-20(a), finding

[t]he fact that the City Manager, and not the City Council, created the Committee and no council member served on the Committee, is not enough to remove the Committee from the definition of “public body” as stated in FOIA. First, it does not matter that the members of the Committee are not members of the parent body. See 1984 S.C. Op Atty Gen., No. 84–281. Second, the Committee was set up to give advice to the City Manager, and ultimately the City Council. It is clear from the minutes of the City Council meeting and the testimony of Thomas Leath, City Manager, the Committee’s selection process and recommendation went directly to the City Council.

Furthermore, the legislature amended the definition of “public body” in 1987 by adding the phrase “including committees, subcommittees, advisory committees, and the like of any such body by whatever name known.” Clearly, the legislature intended for “advisory” bodies, such as the Committee set up by the City Manager to advise him and the City Council, to be covered by the definition.

Id. at 162, 547 S.E.2d at 865. See also Op. S.C. Att’y Gen., 2013 WL 1931657 (S.C.A.G. Apr. 30, 2013) (“It is firmly established that a committee or other body formed to give advice to a government body or a public official is a ‘public body’ subject to FOIA.”). While we do not know the purpose or the function of the committee you reference in your letter, we presume this committee was created by the Richland County School District One Board of Commissioners (the “Board”). The Board, as the governing body for a school district, is clearly a public body under section 30-4-20(a). Therefore, any committee of the Board is a public body and subject to FOIA.

Section 30-4-80 of the South Carolina Code (Supp. 2018) contains the notice requirements for public bodies. As you mentioned in your letter, subsection (E) of this provision requires:

All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called,

and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

S.C. Code Ann. § 30-4-80(E).

In your letter, you indicate the Board takes the position committee meetings are not meetings for purposes of the notice requirements under FOIA because they do not constitute a “convening of a quorum of the constituent membership” We understand you are applying the quorum requirement of the Board to the committee. We believe this interpretation is contrary to the legislative intent as evidenced by the language used in the statute.

FOIA defines “meeting” 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 Ann. § 30-4-20(d) (2007). FOIA provides a “quorum” “unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.” S.C. Code Ann. § 30-4-20(e) (2007) (emphasis added).

If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.

Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 525–26, 642 S.E.2d 751, 754 (2007) (citations omitted) (internal quotations omitted). As we explained above, the committee itself would be considered a public body. According to the plain language used in section 30-4-20(e), the quorum requirement for a meeting covered under FOIA applies the public body. While this committee was formed by the Board, also a public body for purposes of FOIA, if the committee has a quorum of its members and the committee convenes to discuss or act upon a matter over which the committee has supervision, control, jurisdiction or advisory power then the committee must provide notice as required under section 30-4-80.

Our interpretation is consistent with prior opinions of this Office. In 2002, this Office considered whether a committee formed by the Town of Mount Pleasant must be advertised as a town council meeting when a quorum of council members attend the committee meeting. Op. S.C. Att’y Gen., 2002 WL 31341811 (S.C.A.G. Aug. 19, 2002). While this opinion addressed a slightly different issue than you pose to us, a portion of that opinion pertaining specifically to committees is relevant. Initially, we agreed with the town attorney’s assessment that committees formed by the town council are public bodies for purposes of FOIA. Id.

As Mr. Young advised, “Mount Pleasant Town Council and all our committees are considered public bodies which are subject to the freedom of

information act and requirements thereof.” We agree with Mr. Young. This Office has so advised for many years, long before the FOIA was amended expressly to reflect such requirement. See e.g., Op. Atty. Gen., July 28, 1983; Op. Atty. Gen., Op. No. 91-42 (June 28, 1991); Op. Atty. Gen., Op. No. 88-5 (January 14, 1988); Op. Atty. Gen., Op. No. 84-125 (October 26, 1984); Op. Atty. Gen., Op. No. 84-64 (June 1, 1984).

Id. While addressing whether the committee meeting was a “meeting” under FOIA, we stated:

To our knowledge, no court in South Carolina has ever addressed the novel question raised here: whether, for purposes of the FOIA, notice of a full council meeting is required if the committee members, in calling a meeting of the committee, are aware that non-committee members may be in attendance and that, by such attendance, a quorum of the full body will be created where council business is discussed. The FOIA, of course, defines a “meeting” as a convening of the public body - in this instance, the committee itself - to “discuss or act upon” matters within that body's subject matter or jurisdiction.

Id.

We made a similar finding in a 2006 opinion. Op. S.C. Att’y Gen., 2006 WL 1574910 (S.C.A.G. 2006). In that opinion, we discussed whether FOIA applied to a political party caucus of the South Carolina House of Representatives. After concluding a party caucus was public body subject to FOIA, we addressed the quorum requirement. Id. Referring to the caucus as a public body, we stated:

Such a conclusion is not dependent upon the Majority Caucus gathering in sufficient numbers to constitute a quorum of the entire House of Representatives. While in this situation, the Majority Caucus members constitute a majority of the House, and we have concluded that a social gathering of a majority of membership in certain circumstances may constitute a “meeting” of the “public body,” Op. S.C. Atty. Gen., Op. No. 83-55, (August 8, 1983), it is our opinion that the Majority Caucus is itself a “public body” for purposes of FOIA. See, Weston v. Carolina Research and Development Foundation, supra.

Id. Accordingly, we are of the opinion that so long as the committee has a quorum of its members in attendance, a meeting of the committee is a meeting for purposes of FOIA.

In regard to section 30-4-80 cited above and referenced in your letter, this Office continually advised “with very few exceptions, all meetings held by a public body are to be open to the public and media.” Op. S.C. Att’y Gen., 1989 WL 406201(S.C.A.G. Oct. 11, 1989). Moreover, we noted the requirements under section 30-4-80 “must be liberally construed to carry

out their legislative purpose to adequately inform the public. These requirements are mandatory and may not be ignored by a public body. The section requires overt and affirmative action by the public body to fulfill the notice requirements.” Id. (citations omitted). Accordingly, we advise the Board that the committees it creates to provide advice or perform any other governmental function must comply with FOIA, including the notice requirements found in section 30-4-80.

Your letter also mentions that the Board’s work session, retreats, and committee meetings may be treated as meetings, but may be considered closed meeting as outline in section 30-4-70(a)(1)-(5) of the South Carolina Code (2007). Please be advised that “meeting” for purposes of FOIA is broadly defined. In Lambries v. Saluda County Council, 409 S.C. 1, 14–15, 760 S.E.2d 785, 792 (2014), our Supreme Court described meeting as follows:

“Under an open meetings law, a meeting is a gathering of a quorum or more members of a governing body at which members discuss, decide, or receive information as a group on issues relating to the official business of the body A meeting is not limited to gatherings at which action is taken by a governing body. Deliberative gatherings are included as well, and deliberation in this context connotes not only collective decision-making but also the collective acquisition and exchange of facts in preparation for the final decision.”

(quoting 62 C.J.S. Municipal Corporations § 308 (2011)).

In Braswell v. Roche, 299 S.C. 181, 183, 383 S.E.2d 243, 244 (1989), the Supreme Court considered whether a meeting held by the Newberry County Board of Education constituted a meeting for purposes of FOIA. The Supreme Court explained “[a]ccording to the Board, it met only to receive information from its administrative staff regarding matters over which it had ‘supervision, control, jurisdiction or advisory power.’ The Board denies that it convened to ‘discuss or act upon’ such matters.” Id. at 182, 383 S.E.2d at 244. However, the Court found

the nature of items on the agenda, together with the expressed intent to “go over each piece of information,” necessarily entailed Board discussion of matters over which it had “supervision, control, jurisdiction or advisory power” involving Bush River School. Therefore, this Court holds that the convening of the Board on April 7, 1987, was within the definition of a “meeting” under the FOIA as it existed on that date; and, further, that the Board violated the FOIA by failing to give public notice of the meeting.

Id. at 183, 383 S.E.2d at 244.

Numerous opinions of this Office also address the broad meaning of “meeting” under FOIA. In a 1983 opinion quoting a Florida Supreme Court case, we emphasized the purpose of FOIA is

to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meetings conference except to conduct some part of the decisional process behind closed doors. The statute should be construed to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion . . . relates to any matter on which foreseeable action will be taken.

Op. S.C. Att’y Gen., 1983 WL 142726 (S.C.A.G. Aug. 8, 1983). In that opinion, we determined that it did not matter for purposes of FOIA whether a meeting is designated as formal or inform or whether action is taken upon public business or merely discussed, the requirements under FOIA continue to apply. Id. “A public body may not ignore the requirements of the Act when it discusses public business over which it has supervision, control, jurisdiction or advisory power by holding a meeting, as defined, in an informal or social setting.” Id.

Moreover, we also caution that the provisions of section 30-4-70(a) should be narrowly construed in order to further the purpose of FOIA to protect the public from secret government activity. Bellamy v. Brown, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). In a 1994 opinion, we discussed the use of executive sessions. Op. S.C. Att’y Gen., 1994 WL 136198 (S.C.A.G. Mar. 31, 1994).

The Act itself states that the public policy of this State favors public meetings; thus, there must be “some exceptional reason so compelling” as to override that policy and close a meeting for reasons other than those expressly stated in § 30-4-70. (And those “exceptional reasons” would be very few and very far between.)

The Freedom of Information Act is a statute remedial in nature, which must be liberally construed to carry out the purpose mandated by the legislature. See South Carolina Dep’t of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1976). Any exceptions to the Act’s applicability must be narrowly or strictly construed. News and Observer Publishing Co. v. Interim Bd. of Ed. for Wake Co., 223 S.E.2d 580 (N.C. 1976).

Id. As such, the exceptions to the open meeting requirement presented in section 30-4-70(a) should be used sparingly and only when the letter and the spirit of FOIA allow.

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Conclusion

Section 30-4-80(E) of the South Carolina Code requires notice of public meetings be given to “persons or organizations, local news media, or such other news media as may request notification.” Pursuant to section 30-4-20, our courts as well as this Office have consistently found that any committee formed by a public body to give advice or conduct any other governmental function is a public body and subject to FOIA. Furthermore, a meeting under FOIA is determined by the presence of a quorum of the members of the public body. Consistent with prior opinions of this Office, we continue to believe a committee formed by a public body is a public body itself and therefore, the quorum requirements are determined based on the membership of the committee, not the public body from which it was formed. Accordingly, a meeting held by a committee formed by the Board is subject to the notice provisions provided in section 30-4-80(E).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General