



ALAN WILSON
ATTORNEY GENERAL

August 16, 2022

Chairman Eric Mack
Charleston County School District Board of Trustees
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Dear Chairman Mack and Members of the Board of Trustees,

I have recently received several complaints from Charleston County School District (“District”) parents regarding the District’s alleged noncompliance with the South Carolina Freedom of Information Act (“FOIA”). I write now to give you the opportunity to respond to these allegations and to explain and clarify the District’s policies regarding FOIA compliance.

FOIA serves a “vital” purpose in our democratic society by ensuring that public business is performed in an “open and public manner.” S.C. Code § 30-4-15. FOIA thus protects the public from “secret government activity.” *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016). In doing so, FOIA promotes transparency and accountability in our system of government. For decades, in order for public bodies and entities to fully comply with FOIA, this Office has advised that “when in doubt, disclose.” Disclosure is thus generally not only a good idea, it is the law.

As you well know, the substantive provisions of FOIA apply to school districts, including school boards and committees of school boards. *See* S.C. Code § 30-4-20 (defining public body to include school districts); *see also* S.C.A.G. Op. dated Aug. 26, 2019 (2019 WL 4235546). Consequently, the District, the District’s Board, and any committees of the Board are obligated to comply with FOIA’s requirements—including requirements related to notice of meetings of public bodies.

S.C. Code § 30-4-80 sets out those notice requirements and generally mandates that public bodies provide an agenda for regularly scheduled or special meetings at least twenty-four hours prior to the meetings. *See* S.C. Code § 30-4-80(A). Absent a narrow statutory exception, no items may be added to those agendas without an additional twenty-four hours notice to the public. *See* S.C. Code § 30-4-80(A). In other words, the public is entitled to know in advance what a public body will be discussing.

With respect to the allegations against the District, parents have alleged that the District has repeatedly violated S.C. Code § 30-4-80 by failing to provide notice of agenda items for meetings. Specifically, they allege that the District failed to provide proper notice under FOIA of agenda items on at least two recent occasions—first at a meeting of the District's Committee of the Whole on July 18 and second at a District Board meeting on July 18.

In providing the requested response to my Office, I ask that you provide a general description of the District's efforts to comply with FOIA. I also ask that you provide a detailed response to the allegations regarding the July 18 meetings of the Committee of the Whole and the District Board. In doing so, please provide copies of the agendas and minutes for both meetings. If those agendas were changed or updated at any point prior to, during, or following the meetings, please provide copies of all versions of the agendas and indicate the time at which those agendas were changed. If changes were made to those agendas, indicate who was responsible for changing the agenda and whether those changes were approved by a two-thirds vote of the Board. *See* S.C. Code § 30-4-80(A).

These materials will allow my Office to make a determination as to whether or not the District is in compliance with FOIA. Generally speaking, this Office does not possess the resources to enforce FOIA, except through the issuance of advisory opinions, leaving to private citizens the ability to enforce FOIA through court actions. However, where necessary, this Office can and will bring suit against public bodies, who flout their duties under FOIA. Moreover, a consistent pattern of FOIA violations can lead to possible criminal prosecutions for misconduct in office, which carry stiff criminal penalties. In short, FOIA cannot be ignored or circumvented, and this Office will work to ensure that the law is upheld.

Please provide my Office with a copy of these materials within thirty days of the receipt of this letter. If these materials confirm that a FOIA violation occurred—which appears to be the case based upon the allegations presented—we strongly urge you to reschedule the prior committee and board meetings, publish agendas in advance for those meetings, and revote in compliance with the relevant FOIA provisions. Additionally, if these materials indicate that FOIA has been violated, this Office is prepared to take further legal action.

Sincerely,



Alan Wilson