

South Carolina General Assembly

121st Session, 2015-2016

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Bill 913

~~Indicates Matter Stricken~~

Indicates New Matter

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AMENDED

May 26, 2016

S. 913

Introduced by Senators L. Martin, Davis, Hembree, Fair and Malloy

S. Printed 5/26/16--H. [SEC 5/27/16 11:14 AM]

Read the first time April 12, 2016.

A BILL

TO AMEND SECTION 30-4-50 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO THE FREEDOM OF INFORMATION ACT, TO INCLUDE LAW ENFORCEMENT VEHICLE MOUNTED VIDEO AND AUDIO RECORDINGS IN THE LIST OF SPECIFIC CATEGORIES OF INFORMATION THAT IS TO BE MADE AVAILABLE TO THE PUBLIC, AND TO PROVIDE THAT LAW ENFORCEMENT MAY APPLY FOR INJUNCTIVE RELIEF FROM THE CIRCUIT COURT IF THERE IS CLEAR AND CONVINCING EVIDENCE OF SPECIFIC HARM FROM THE RELEASE OF THE RECORDING.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 23, Title 1 of the 1976 Code is amended by adding:

"Section 1-23-665. (A) There is created within the Administrative Law Court the Office of Freedom of Information Act Review. The Chief Judge of the Administrative Law Court shall serve as the Director of the Office of Freedom of Information Act Review. The hearing officers and staff must be appointed, hired, contracted, and supervised by the chief judge of the court, shall exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge, and shall perform other functions and duties prescribed by the chief judge of the court. All employees of the office shall serve at the discretion of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff.

Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Freedom of Information Act Review. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution, 1895.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23, Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Freedom of Information Act Review, at suitable locations as determined by the chief judge.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for hearing officers are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against hearing officers for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to, and attend, a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be filed with the Administrative Law Court pursuant to the court's appellate rules of procedure. Recordings of all hearings must be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge may not hear appeals from these decisions.

(E) A hearing officer shall issue an order containing findings of fact and conclusions of law. If a hearing officer determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the award of attorney's fees or other costs to the prevailing party should the hearing officer's determination be reversed on appeal. If a hearing officer determines that a record is subject to disclosure, the order must set forth in writing what information must be disclosed and when that disclosure must occur. If the decision of the hearing officer is not timely appealed to the Administrative Law Court, a prevailing party may apply to the Administrative Law Court to enforce

the determination. If the decision is appealed to the Administrative Law Court, and the administrative law judge upholds a decision ordering disclosure of information, the administrative law judge may enforce the hearing officer's determination as the court considers appropriate. If the administrative law judge rules that the determination must be enforced, the court may hold a person, the responsible officer, or the public official of a public body in civil contempt for failing to comply with the provisions of Section 30-4-30 or an order of the court relating to Section 30-4-30. The administrative law judge also may award attorney's fees pursuant to Section 30-4-110.

(F) This section does not apply to data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera."

SECTION 2. Section 1-23-500 of the 1976 Code is amended to read:

"Section 1-23-500. There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system. For purposes of Chapter 13 of Title 8, the Administrative Law Court is considered part of the unified judicial system."

SECTION 3. Section 30-4-30 of the 1976 Code is amended to read:

"Section 30-4-30. ~~(a)(A)(1)~~ Any A person has a right to inspect or, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

~~(b)(B)~~ The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from

public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. ~~Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.~~ A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

~~(e)(C)~~ (C) Each public body, upon written request for records made under this chapter, shall within ~~fifteen~~ ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of ~~any such~~ the request, notify the person making ~~such the~~ such the request of its determination and the reasons ~~therefor~~ for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. ~~Such a~~ This determination ~~shall~~ must constitute the final opinion of the public body as to the public availability of the requested public record ~~and, if,~~ however, the determination is not required to include a final decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, ~~electronically transmitted,~~ nor personally delivered to the person requesting the document within the ~~fifteen days allowed herein,~~ time set forth by this section, the request must be considered approved as to non-exempt records or information. Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

~~(d)(D)~~ (D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to

Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
 - (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day; ~~and~~
 - (3) documents identifying persons confined in ~~any~~ a jail, detention center, or prison for the preceding three months; and
 - (4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.
- (E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request."

SECTION 4. Section 30-4-100 of the 1976 Code is amended to read:

"Section 30-4-100. ~~(a)(A) Any~~ Except for violations arising from Section 30-4-30 or challenges to exemption under Section 30-4-40, a citizen of the State may apply to the circuit court for either or both a declaratory judgment and, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases as long as such if the application is made no later than one year following after the date on which the of the alleged violation occurs or one year after a public vote in public session, whichever comes later. The circuit court shall also have exclusive jurisdiction to hear a challenge to (1) a determination that an organization is not a public body as defined by Section 30-4-20(a), and (2) data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

~~(b)(B)~~ If a person or entity seeking ~~such~~ relief under this section prevails, he ~~or it~~ may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If ~~such the~~ person or entity prevails in part, the court may in its discretion award him ~~or it~~ reasonable attorney's fees or an appropriate portion ~~thereof~~ of those attorney's fees."

SECTION 5. Section 30-4-110 of the 1976 Code is amended to read:

"Section 30-4-110. ~~Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.~~

(A) The Office of Freedom of Information Act Review has exclusive jurisdiction over all cases, except cases involving data from a video or audio recording made by a law enforcement vehicle mounted recording device or dashboard camera where the circuit court has exclusive jurisdiction, arising from Section 30-4-30 or challenges to exemptions under Section 30-4-40 subject only to appellate review consistent with Section 1-23-380. A person aggrieved by a violation of Section 30-4-30 or challenges to exemptions under Section 30-4-40 may file a request for a hearing before the Office of Freedom of Information Act Review within one year after the occurrence of the alleged violation.

(B) A citizen of this State may file a request for a hearing with the Office of Freedom of Information Act Review pursuant to Section 1-23-665 in the following instances:

(1) to seek specific enforcement of a request made pursuant to Section 30-4-30 when the public body from which the records are requested fails to comply with the time limits provided in Section 30-4-30(C),

(2) to challenge the reasonableness of a fee assessed pursuant to Section 30-4-30, and

(3) to challenge a public body's determination that the requested information is not a public record under Section 30-4-20(c), or that the requested information is exempt from disclosure under Section 30-4-40.

(C) A public body may file a request for hearing with the Office of Freedom of Information Act Review pursuant to Section 1-23-665 to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

(D) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the Office of Freedom of Information Act Review or to intervene in an action previously filed.

(E) If a person or entity seeking relief under this section prevails, the hearing officer may order:

(1) equitable relief as he considers appropriate,

(2) actual or compensatory damages, or

(3) reasonable attorney's fees and other costs of litigation specific to the request, unless otherwise barred by a finding of good faith pursuant to Section 1-23-665(E).

(F) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

(G) If the hearing officer finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it

may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.

(H) A determination of the Office of Freedom of Information Act Review may be appealed to the Administrative Law Court or enforced by an administrative law judge pursuant to Section 1-23-665. The service of a notice of appeal to the Administrative Law Court acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect until the final judgement or decision of the Administrative Law Court or unless otherwise ordered by the administrative law judge. Further appeals to the Court of Appeals are subject to Section 1-23-610 and the South Carolina Appellate Court Rules."

SECTION 6. Section 30-2-50 of the 1976 Code is amended to read:

"Section 30-2-50. (A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both.

~~(E) This chapter does not apply to a local governmental entity of a subdivision of this state or local government."~~

SECTION 7. This act takes effect on October 1, 2016.

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