

BAMBERG COUNTY, SOUTH CAROLINA
ORDINANCE NO. 1-16-5

**AN ORDINANCE ESTABLISHING POLICIES AND TERMS FOR
COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF
INFORMATION ACT IN BAMBERG COUNTY.**

WHEREAS, the South Carolina Freedom of Information Act, codified at Section 30-4-10 *et seq.* (the “Act”), South Carolina Code, 1976, as amended (the “Code”), established the law and procedures in South Carolina for local governments to not only comply with the “Act”, but to do their work “in the sunshine” so that citizens and the public know what government is doing, to create confidence in local government; and

WHEREAS, Bamberg County (the “County”), South Carolina (the “State”), acting by and through its governing body, the Bamberg County Council (the “County Council”), wishes to fully implement the Act in the County and establish clear rules and procedures for its implementation, so that the public knows how to and can obtain records in the most efficient manner, so that County staff are protected from needlessly burdensome demands, and so that the taxpayers of the County are protected from having to pay for purely personal needs of others.

NOW, THEREFORE, be it ordained by Bamberg County Council, in meeting duly assembled that:

1. The Bamberg County Code of Ordinances is hereby amended to add the following Article ___ and Sections:

“ARTICLE __ - FREEDOM OF INFORMATION

Section 1 – Compliance with Act.

All requests for access to and copies of public records involving Bamberg County government, its agencies and departments shall be processed and governed by the letter and spirit of the South Carolina Freedom of Information Act (“FOIA”), S.C. Code 1976, § 30-4-10 *et seq.*, in its entirety. Specifically, but not exclusively, any requesting party shall be given the widest possible access to public records of the county, consistent with principles of good government and the specific exclusions contained in the Freedom of Information Act. Nothing contained herein is intended, nor shall it be construed in any regard as abridging or limiting the Act in any regard. All procedures listed herein shall be applied to comply with the Act in all regards. However, all of the foregoing notwithstanding, FOIA is not, and was never intended to be, an open-ended fishing expedition, or a means for tying up limited county staff and resources. FOIA is a means through which the public can view its government in operation, so that it can judge for itself what is being done, and how. As to records, FOIA is a vehicle for obtaining actual records of the county that are already in existence. FOIA is not a vehicle for obtaining general information or explanations. Usually, telephone calls to county staff will provide that. FOIA addresses only “records”, and even then, only records that are already in being. Nothing in FOIA requires that any government body create records to respond to a FOIA request. The purpose of Bamberg County government is to provide services to the people of Bamberg County, and responding to FOIA requests in a complete and timely basis has to be fitted into the existing demands of providing services to the county public, without any additional staff or assets.

Bamberg County hereby designates the Bamberg County _____ as the Bamberg County FOIA Officer, responsible for overall implementation of county FOIA policy and procedures, and ultimately responsible for every FOIA response.

Section 2 – Responsibility for expenses.

(a) While the general intent is to provide the widest possible access to public records, it should be understood by both county departments and agencies and by requesting parties that where the requests are substantial, it normally should be the requesting party, as opposed to the general tax-paying public, which bears the expense of responding to such requests.

(b) The South Carolina Freedom of Information Act indicates that 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. In those circumstances where the information requested is of a *de minimis* nature (10 pages of copied material or less, and where the only labor involved in responding to the request is actually making copies), it shall normally be the policy of the county to waive all fees or charges for the material requested. Further, even when the volume of material requested is greater than 10 pages or if there is some labor involved in responding to the request, if furnishing the information can be considered as primarily benefiting the general public, as opposed to primarily benefiting a purely personal or commercial interest, the fees or charges may be waived or reduced. The latter situation will be a case-by-case determination, made by the County Administrator, and based upon a balancing of the amount of information requested and the time spent in responding to such a request as opposed to the amount of public interest and public good to be served by the responding to such request. The South Carolina Freedom of Information Act also lists certain materials which must be made available for inspection and copying to any requesting member of the public at no charge. Those materials are listed in S.C. Code 1976, §30-4-30(d), and include, without limitation certain minutes of meetings of public bodies. The terms and provisions of that section will be recognized and honored by all county public bodies.

(c) In order to provide the widest possible dissemination of information pertaining to actions of the county council, special provisions pertaining to the agenda packets for county council meetings are hereby established as being primarily in the public interest. Notwithstanding the number of pages in any particular county council meeting agenda packet, any individual or entity may receive any such agenda packet for \$5.00 (or less, if the actual costs are less), paid to the clerk to county council, by making a specific request to the clerk to county council for such packet not later than the cut-off time for agenda items for the agenda packet in question (currently by _____ p.m. on the [Day] _____ preceding a regular council meeting), and then picking up the agenda packet in question from the office of the clerk to county council or by providing the clerk with a self-addressed, stamped envelope, with sufficient postage attached to cover the total costs of mailing the agenda packet in question. The agenda will be provided to all county news media, and a copy of the full agenda packet will continue to be made available for examination by the public or other interested entities, including the media, at the office to the clerk to county council. A copy of the complete agenda packet will be provided at no cost to all Bamberg area media, upon request. Other news media desiring the complete

agenda packets, including backup information and material, may receive a copy utilizing the foregoing provisions for requests to the clerk to council.

Section 3 – Collection of fees.

(a) In all cases not addressed by Section 2, hereof, or by other state or local laws dictating a specific fee or cost for a particular service or record, or waiver of fees and costs, including, without limitation, the Act, the county department or agency involved will collect fees not to exceed the actual costs of searching for and making copies of the records requested. These fees, in a form payable to the county, are to be rendered to the county treasurer and a receipt given or collected and funds remitted to the county treasurer on the day of receipt.

(b) The fees charged must be uniform to all requesting parties for copies of the same record or document. In every instance, the fees charged must be the lowest possible that will actually cover actual costs involved. Because the costs of providing copies must include not only the direct reproduction costs, such as paper, supplies and electricity, but must include indirect costs such as depreciation of equipment, it will normally be presumed that \$0.25 per copy will be the minimum amount charged for reproduction of county records. If the records require more expensive reproduction, such as in the case of oversized documents or special reproduction, then the actual full costs of reproduction will be charged.

(c) Further, with regard to labor costs, all personnel costs of searching for and making copies of records by county employees will be quantified, calculated and charged to the requesting party, using the average of the rates of all county staff which normally, in the routine course of their duties, respond to FOIA requests, times the actual time spent, as labor costs for any given response and estimate. Where actual labor costs are higher, then the actual costs will be charged. In every instance in which costs are charged, an estimate of the charges should be provided to the requesting party showing the costs for copies and the personnel costs, as calculated above, before work begins on responding to the request. Upon payment as indicated above, the work shall be performed. Actual records of time and materials are to be kept and an adjustment positive or negative made to the requesting party. Upon payment by the requestor, the documents are to be provided to them.

Section 4 – Timeliness of responses.

The first and primary purpose of every county department and agency is to provide to the county and its citizens the public service for which that department or agency was established; therefore, ancillary services, such as providing copies of public records, must be accommodated within the overall goal of meeting the department's or agency's main mission objective. In this regard, however, all departments and agencies are governed by the Freedom of Information Act requirement that written requests for records must be responded to within 15 days (excepting Saturdays, Sundays and legal public holidays) of the receipt of any such request. All requests received by the county must be date/time stamped, by machine or manually, immediately upon receipt by the county. A form response letter is attached to this ordinance, and is hereby incorporated herein as fully as if set forth verbatim herein. County responses may, but are not required to, conform to the general format and content of that attachment. The warning caveat at the bottom of the attachment shall be stamped on or attached to all documents provided in response to FOIA requests.

Section 5 – Form of records; examination of public records.

In every instance, 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 to the county to provide the records in such form. There shall be no cost charged to any individual for examination (not copying) of public records, unless any such request requires actual expenditure of labor to search for the requested records. In the latter case, charges will be imposed and collected in accordance with the provisions of this article. In every event, however, it must always be remembered that FOIA is for the production of actual records, already in existence, only. No new records, in any format, will be created solely for a response to a FOIA request, and response in a requested format or form will only be made if that is equally convenient and efficient to the county to provide it in that format or form.

Section 6 – Public bodies to comply with Freedom of Information Act.

(a) At the beginning of each calendar year all public bodies (as defined in the Freedom of Information Act) must give written notice of the dates, times, and places of regular meetings to the clerk to council who will ensure that the meeting schedules are publicly posted, noticed, and disseminated.

(b) Notice of special or called meetings shall be given sufficiently in advance to the clerk of council that she shall post a notice on a public bulletin board and notify news media at least 24 hours before the meeting. This provision shall not apply to emergency meetings of county council.

(c) 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.

(d) All meetings shall be open to the public unless closed in executive session in accordance with S.C. Code 1976, §30-4-70. Prior to going into executive session, the public body shall state the reason for the executive session and shall vote in public on the question and when such vote is favorable, the presiding officer shall announce the specific purpose of the executive session in accordance with South Carolina law.

(e) Meetings shall be conducted on public property accessible by the general public, including, without limitation, county or state buildings or facilities, schools, civic auditoriums, libraries, municipal buildings, or courtrooms.

(f) Minutes, including the date, time, and place of the meeting, substance of matters discussed, members present and absent, actions taken, and votes, shall be taken of the proceedings of all public meetings. All minutes shall be permanently maintained and shall be available for public inspection. Further, any person in attendance may record any part of a public meeting, except when the meeting is closed pursuant to subsection (d) in accordance with S.C. Code 1976, §30-4-90(c), as long as the manner of recording is not objectively disruptive to the normal conduct of such meetings (e.g., no use of flash photography).


(g) Agendas shall be written or typed at least 24 hours in advance of all meetings and a copy shall be given to the clerk to council for public display.

(h) Any person or group of persons who willfully violates the terms of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than \$100.00 or imprisoned for not more than 30 days for the first offense, and shall be fined or imprisoned as provided by state law for the second and all subsequent offenses.”

2. All other parts and provisions of the Bamberg County Code of Ordinances not amended hereby, either explicitly or by implication, remain in full force and effect.
3. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.
4. All ordinances, orders, resolutions, and actions of Bamberg County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.
5. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by Bamberg County Council.

ORDAINED in meeting, duly assembled, this 12th day of September, 2016.

ATTEST:


Clerk to Bamberg County Council


Chairman, Bamberg County Council

First Reading: July 11, 2016
Second Reading: August 8, 2016
Third Reading: September 12, 2016
Public Hearing: September 12, 2016