

Office of the Inspector General

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Study of Executive Branch State Agencies Freedom of Information Act Policies and Fee Schedules

I. Executive Summary

The South Carolina Office of the Inspector General (SIG), at the request of the Office of the Governor, initiated a study of the state's Executive Branch (EB) agencies and public higher education institutions' implementation of the amended 2017 Freedom of Information Act (FOIA) found in [SC Code of Laws, §30-4-10 et seq.](#)

The scope and objectives of the study were to determine the implementation of specific requirements set forth in the amended FOIA and to identify any challenges and inefficiencies within the EB's FOIA processes and potential areas for improvement.

To accomplish this study, the SIG reviewed and compared the fee schedules and FOIA policies of a group sampling of 35 statewide agencies comprised of EB cabinet agencies, four-year public universities, and statewide elected offices to the state's revised FOIA. In addition, the study group completed a 40-question survey for the purpose of capturing information specific to each agency not publicly available.¹

Background

When Governor Henry McMaster signed [House Bill 3352](#) into law on 5/19/2017, the amended FOIA provided greater transparency and access for persons seeking access to public documents. The more noteworthy changes occurred in a public body's ability to assess a fee for the search, retrieval, and redaction of a record, and the response time established for a public body to respond and fulfill the FOIA request. These key changes included:

- Required public bodies to develop, and post online, a fee schedule for fulfilling FOIA requests, including those for the search, retrieval, redaction, and copying of records.
- Limited the rate a public body could charge for the search, retrieval, and redaction of records not to exceed the prorated hourly wage of the lowest paid employee with the skill and training to fulfill the request.
- Limited the copy rate a public body could charge; not to exceed the prevailing commercial rate.
- Limited a deposit of no more than 25% of the reasonably anticipated cost for reproduction of the records.
- Reduced a public body's initial determination response time from 15 to 10 business days to notify the requestor of the existence of records and provide a reasonable anticipated cost to search, retrieve, and redact records responsive to the request. For records older than 24 months, the initial determination response time is 20 business days.
- Required a public body to produce the requested records within 30 calendar days (35 days for records older than 24 months) from the date it initially responds to the FOIA request, unless a deposit is required.

Review and Analysis of Fee Schedules and FOIA Policies

The SIG determined that while each member of the study group maintained a fee schedule and FOIA policy on individual websites, the study identified varying degrees of content among the fee schedules. The state's FOIA does not set specific fees for individual FOIA processes but rather provides the public body the flexibility to administer the FOIA process within the fee limitations set forth in the law.

¹ **Disclaimer:** This is not a legal analysis performed by a lawyer of the law or its application in a particular circumstance, but a review of the study group's public fee schedules, and based on information provided by the individual agencies.

The SIG determined only thirteen (37%) of the 35 agencies provided a complete fee schedule for the search, retrieval, redaction, and copying of records. Further dissection of the fee schedules identified:

- Six (17%) agencies utilized one all-inclusive fee for the search, retrieval, and redaction of records.
- Five (14%) agencies specified the fee for the search and retrieval of records was all-inclusive, but charged a separate fee for redaction.
- Twenty-two (63%) agencies provided a fee schedule in some form with a specification for the cost of search, retrieval, or redaction.
- Four (11%) agencies did not list any fee for these services (search, retrieval, or redaction).²
- A copy fee was included on 34 of the 35 (97%) agency websites, while one agency indicated “actual cost.”

However, nine agencies (26%) listed “lowest prorated hourly staff salary,” or some variation, as the fee for the search, retrieval, and redaction of records. Although the law states that production fees cannot exceed the prorated hourly wage of the lowest paid staff employee capable of performing the task, the information provided by these agencies could be clearer to provide the public sufficient information to estimate the cost of a FOIA request and therefore tailor the request to minimize fees.

The SIG’s review and analysis of the study group’s FOIA policies determined that three agencies (8%) indicated an initial determination response time of 15 business days for records less than 24 months old, which does not appear to comply with the 10 business days set forth in the 2017 statute.³ Additionally, two (6%) agencies indicated “requests for information will be processed expediently,” with no further explanation to determine if it is consistent with the FOIA. Two of these agencies had outdated FOIA policies (2006 and 2011). In total, five (14%) of the agencies’ FOIA policies were outdated (2002, 2004, 2006, 2011 and 2016).

A comparison of the fee schedules for the study group is set forth in Table 1 below.

Table 1. Comparison of the 35 Agencies’ FOIA Fee Schedules

Agency #	Search Fee per hr	Retrieval Fee per hr	Redaction Fee per hr	Copy Fee
1	← \$15 fee all-inclusive →			\$0.05
2	← \$19 fee all-inclusive →			\$0.20
3	← \$20 fee all-inclusive →			\$0.25
4	← \$33 fee all-inclusive →			\$0.10
5	← \$45 fee all-inclusive →			\$0.25
6	← \$20 hr > 10 hrs fee all-inclusive →			\$0.10
7	← \$10 fee all-inclusive →		\$10	\$0.15
8	← \$15 fee all-inclusive →		\$25	\$0.25
9	← \$25 fee all-inclusive →		\$20	\$0.15
10	← \$25 fee all-inclusive →		\$47	\$0.15
11	← \$25 fee all-inclusive →		\$47.65	○
12	\$20	\$20	\$20	\$0.20
13	\$20 hr > 30min	\$20 hr > 30min	\$20 hr > 30min	\$0.20
14	\$25.92	\$25.92	\$25.92	\$0.25
15	\$22	○	\$22	\$0.06
16	\$37	○	\$37	\$0.06

Agencies	Search/ Retrieval Fee	Redaction Fee	Copy Fee
Average	\$22.49	\$26.66	\$0.19
Median	\$21.00	\$21.00	\$0.20

Agency #	Search Fee per hr	Retrieval Fee per hr	Redaction Fee per hr	Copy Fee
17	\$10	○	○	\$0.50
18	\$15	○	○	\$0.10
19	\$20hr > 2hrs	○	○	\$0.10
20	\$25	○	○	\$0.25
21	\$25	○	○	\$0.25
22	\$30	○	○	\$0.20
23	●	●	●	\$0.10
24	●	●	●	\$0.20
25	●	●	●	\$0.10
26	●	●	●	\$0.10
27	●	●	●	\$0.20
28	●	●	●	\$0.20
29	●	●	●	\$0.25
30	●	●	●	\$0.25
31	●	●	●	0.25+tax
32	○	○	○	\$0.26
33	○	○	○	\$0.15
34	○	○	○	\$0.25
35	○	○	○	\$0.25

- Not specified in agency’s FOIA Fee Schedule
- Lowest paid staff prorated hourly rate

² Individual survey responses: one agency only charges for copying; one agency is primarily governed by federal the FOIA; and one agency’s fees for records is set in the SC Code of Laws.

³ Note: This does not account for mutually agreed upon extensions between the requestor and the governmental agency.

Survey Summary Analysis

Thirty-four of the 35 agencies (97%) in the study group responded to a 40-question survey, which provided a snapshot of each agency's FOIA process, and its effectiveness. A comparative analysis of the survey data identified the following:

FOIA Fee Schedule Process

Eighteen (55%) of the 33 respondents indicated a fee for the search, retrieval, or redaction of records was individually charged; while 14 (42%) agencies indicated the fee was all-inclusive. In contrast to the SIG's analysis of the 35 agencies' publicly available fee schedules only six agencies (17%) indicated the fee for search, retrieval, or redaction of records was all-inclusive in one rate.

Agency Management of FOIA Requests

Nearly 90% of the agencies indicated that all FOIA requests were received in writing and maintained in a FOIA request log. Several of the larger agencies/institutions indicated that, because some requests involved obtaining documents from various departments, FOIA logs may be kept in several locations, but no central log for all FOIA requests. This decentralized approach and utilization of multiple departments/personnel within an agency would account for the nine agencies that listed "lowest prorated hourly staff salary" in the fee schedules.

Agency Response to FOIA Requests: Accessibility, Timeliness, and Costs

Twenty-eight agencies (82%) provided the records to the requesting party in both hard copy and electronic format. Another five agencies (15%) provided the records electronically, and only one agency (3%) indicated the documents were provided in hard copy. The majority of the agencies, 29 (85%), provided an initial determination within 10 business days to the requesting party for records less than 24 months old.⁴

Twenty (59%) agencies indicated records were always made available for public inspection and copying and another five agencies (15%) indicated records were made available sometimes but sent the requester a copy. Sixteen agencies (47%) indicated the requesting party was always notified of the estimated cost to produce the records. While only six agencies (18%) indicated a deposit was always required before searching or making copies of records another 20 agencies (59%) indicated a deposit was required sometimes, and six agencies (18%) indicated a deposit was never required.

Comparison of Media and Public FOIA Requests for FY2017-18 and FY2016-17

A comparison of media and public FOIA requests data before and after the implementation of the 2017 law revealed the number of FOIA requests from the media and the public remained relatively consistent over the past two years, with the majority of the agencies receiving less than 100 requests each year. For both media and public FOIA requests, two-thirds of the agencies' final production response time averaged less than 20 calendar days. Although the majority of the agencies indicated less than \$500 was collected in fees each year, it does not account for the size of the FOIA request.

For media FOIA requests, nine agencies (26%) indicated the requestor sought injunctive relief by a circuit court in FY2017-18 and seven agencies (21%) for FY2016-17. Similarly, seven agencies (21%) sought injunctive relief by a circuit court in FY2017-18, and six agencies (18%) in FY2016-17.

⁴ Note: This does not account for mutually agreed upon extensions between the requestor and the governmental agency.

For public FOIA requests, seven (21%) agencies indicated the requestor sought injunctive relief by a circuit court in both FY2017-18 and FY2016-17, while only five agencies (15%) sought relief by a circuit court during FY2017-18, and four agencies (12%) in FY2016-17.

Summary

The intent of this study was to review a group sampling of EB agencies and report the results to all EB agencies in order for each EB agency to conduct a top to bottom review of its FOIA policy, ensure its consistency with the 2017 FOIA, and make any necessary adjustments. It further sought to address two of the most frequently asked questions by the public: (1) How is the cost associated with a FOIA request determined; and (2) How long does it take for a response to a FOIA request to obtain or view the records? The SIG determined each member of the 35-agency study group complied with the requirement to post its fee schedule on its publicly available website.

As evidenced by the comparison of the study group's fee schedules (Table 1), gaps exist in the specification of fees for individual FOIA processes among the agencies. A starting point in determining a uniform, if not all-inclusive, fee for those without a defined fee schedule would be to use the study group's average costs identified in Table 1. Based on the average hourly fee of \$22.49 for the search or retrieval of records, the average annualized salary of an employee conducting these processes is \$43,855. Similarly, the average hourly fee of \$26.66 for the redaction of records equated to an average annualized salary of \$51,988.

There will always be exceptions to this approach, particularly in the use of specialized IT resources and personnel, or in a decentralized structure of multiple departments and staff conducting FOIA searches. However, to the extent possible, agencies should strive to disclose publicly the fees charged for FOIA requests.

The following resources and succinct guides are provided to assist all EB agencies in its FOIA process:

- [“Public Official’s Guide to Compliance with the S.C. Freedom of Information Act”](#)
- [“Changes to the Freedom of Information Act from H3352.”](#)

Recommendation

It is the SIG's recommendation that each EB agency and public higher education institution utilize the findings in this study to conduct a review of its FOIA policy, and make any necessary adjustments consistent with the 2017 FOIA statute.

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II. Background

A. Predicate

The South Carolina Office of the Inspector General (SIG), at the request of the Office of the Governor, initiated a study of the state's Executive Branch (EB) agencies and public higher education institutions' implementation of the amended 2017 Freedom of Information Act (FOIA) found in [SC Code of Laws, §30-4-10 et seq.](#)

B. Scope and Objectives

The scope and objectives of the study were to determine the implementation of specific requirements set forth in the amended FOIA, identify any challenges and inefficiencies within the EB's FOIA processes, and identify potential areas for improvement.

C. Methodology

The SIG's study methodology included a group sampling of 35 statewide agency fee schedules and FOIA policies to include a comparison of the cabinet agencies, four-year public universities, and statewide elected offices to the state's revised FOIA. In addition, the SIG developed and administered a 40-question survey to the study group for the purpose of capturing information specific to each agency not available on the agency's public website, as well as identifying obstacles or other comments related to implementing the changes to the law.⁵

III. Comparison of SC FOIA and Agencies' Implementation

A. SC FOIA Key Provisions

On 5/19/2017, Governor Henry McMaster signed [House Bill 3352](#) into law, which amended the state's FOIA. As a result, certain aspects of the law provided greater transparency and access to public records for persons seeking access to public documents.

1. Fee Schedule

[SC Code of Laws, §30-4-30\(B\)](#), provides for a public body to establish and collect reasonable fees not to exceed the actual cost for the search, retrieval, or redaction of records. The law directed the FOIA fee schedule to be posted online by the public body.

The FOIA established that the fee for the search, retrieval or redaction of the records could not exceed the prorated hourly salary "of the lowest paid employee who, in the reasonable discretion of the custodian of records, has the necessary skill and training to perform the request." This afforded each public body the flexibility to tailor its fee schedule, to include establishing an all-inclusive fee or individual fees for each process of a FOIA request, as well as setting its fees at rates lower than the maximum allowed by law.

2. Response Time

The amended law, under [SC Code, §30-4-30\(C\)](#) also reduced the public body's response time to a written FOIA request from 15 to 10 business days in determining the availability of documents and the costs to fulfill the

⁵ **Disclaimer:** This is not a legal analysis performed by a lawyer of the law or its application in a particular circumstance, but a review of the study group's public fee schedules, and based on information provided by the individual agencies.

request. For records more than 24 months old, the initial determination response time was reduced to a maximum of 20 business days. If the request is granted, the record must be provided or made available for inspection or copying within 30 calendar days, or 35 calendar days if the information was more than 24 months old. If a 25% deposit is required, the record must be furnished within the same timeframe after the deposit is received. However, deadlines may be extended by consent between the requestor and the governmental agency.

3. Exemption and Injunctive Relief

The 2017 law further defined the information which may be considered exempt from disclosure either through requirement of the law or at the discretion of the public body under [SC Code, §30-4-40](#). Additionally, a requestor may apply to a circuit court for declaratory judgment, injunctive relief or both to enforce provisions of the FOIA statute as found under [SC Code, §30-4-100](#). Equally important, under [SC Code, §30-4-110](#) a public body may file a request for a hearing with the circuit court to seek relief from requests which it deems unduly burdensome, overly broad, or vague, among others.

4. Other Key Provisions

- The public body is not required to create an electronic version of a public record where one did not exist.
- Copy charges may not apply to records transmitted in an electronic format.
- Copy charges could not exceed the prevailing commercial rate.
- Provided the public body the discretion to reduce or waive the cost for production of the documents.
- A public body could require a deposit, not to exceed 25% of the anticipated cost for reproduction of the records prior to the public body searching for or making copies of the records.
- A fee could not be charged for the examination and review of a document to determine if it was subject to disclosure.

A guide for both public officials and citizens for FOIA requests can be found at [“Public Official’s Guide to Compliance with the S.C. Freedom of Information Act.”](#)

A succinct guide to the various revisions to the state’s FOIA was found in the Municipal Association of South Carolina document titled, [“Changes to the Freedom of Information Act from H3352.”](#)

B. Review and Analysis of Agencies’ Fee Schedules and FOIA Policies

The SIG determined that each of the 35 agencies in the study group maintained a fee schedule on the agency’s public website, which included a FOIA policy, in accordance with the state’s FOIA. The study identified varying degrees of content among the agency fee schedules, to include a substantial variance in the fees for fulfilling the requests. Key among the findings were the following:

- Thirteen (37%) of the 35 agencies provided a complete fee schedule for the cost to search, retrieve, redact and copy documents.
- Six (17%) agencies utilized one all-inclusive fee for the search, retrieval, and redaction of records; while five (14%) agencies indicated the fee for the search and retrieval of records was all-inclusive, but charged a separate fee for redaction.
- Nine (26%) of the 35 agencies listed “lowest prorated hourly staff salary” as the fee for the search, retrieval or redaction of records.

- Twenty-two (63%) agencies provided a fee schedule in some form with a specification for the cost to search, retrieve, or redact.
- Four (11%) agencies did not distinguish any fee for these services (search, retrieval, or redaction).⁶
- A copy fee was included on 34 of the 35 (97%) agency websites, while one agency indicated “actual cost.” By not providing more information on its copy fee, the requestor does not have sufficient information to estimate the cost and tailor the request.
- One agency’s copy fee of \$0.50 exceeded the prevailing commercial rate⁷, while fees for copies ranged from \$0.05 to \$0.50 per page (900% variance).
- Fees for search, retrieval and redaction ranged from \$10.00 to \$47.65 per hour (377%) variance, which is a variable based on the lowest paid employee who is able to do the work.
- Sixteen (46%) of the 35 agencies indicated a 25% deposit requirement for FOIA requested documents. One agency indicated that a partial deposit may be required prior to searching or producing records; one agency indicated that an advance deposit may be charged based upon the estimated cost of the request; and another indicated a deposit may be required if the charge was expected to exceed \$50.00. However, one agency’s deposit requirement of 50% exceeded the 25% deposit rate set forth in the FOIA statute.

A comparison of the fee schedules for the group sampling is detailed in the table below.

Table 1. Comparison of the 35 Agencies’ FOIA Fee Schedules

Agency #	Search Fee per hr	Retrieval Fee per hr	Redaction Fee per hr	Copy Fee
1	← \$15 fee all-inclusive →			\$0.05
2	← \$19 fee all-inclusive →			\$0.20
3	← \$20 fee all-inclusive →			\$0.25
4	← \$33 fee all-inclusive →			\$0.10
5	← \$45 fee all-inclusive →			\$0.25
6	← \$20 hr > 10 hrs fee all-inclusive →			\$0.10
7	← \$10 fee all-inclusive →		\$10	\$0.15
8	← \$15 fee all-inclusive →		\$25	\$0.25
9	← \$25 fee all-inclusive →		\$20	\$0.15
10	← \$25 fee all-inclusive →		\$47	\$0.15
11	← \$25 fee all-inclusive →		\$47.65	○
12	\$20	\$20	\$20	\$0.20
13	\$20 hr > 30min	\$20 hr > 30min	\$20 hr > 30min	\$0.20
14	\$25.92	\$25.92	\$25.92	\$0.25
15	\$22	○	\$22	\$0.06
16	\$37	○	\$37	\$0.06

Agency #	Search Fee per hr	Retrieval Fee per hr	Redaction Fee per hr	Copy Fee
17	\$10	○	○	\$0.50
18	\$15	○	○	\$0.10
19	\$20hr > 2hrs	○	○	\$0.10
20	\$25	○	○	\$0.25
21	\$25	○	○	\$0.25
22	\$30	○	○	\$0.20
23	●	●	●	\$0.10
24	●	●	●	\$0.20
25	●	●	●	\$0.10
26	●	●	●	\$0.10
27	●	●	●	\$0.20
28	●	●	●	\$0.20
29	●	●	●	\$0.25
30	●	●	●	\$0.25
31	●	●	●	0.25+tax
32	○	○	○	\$0.26
33	○	○	○	\$0.15
34	○	○	○	\$0.25
35	○	○	○	\$0.25

- Not specified in agency’s FOIA Fee Schedule
- Lowest paid staff prorated hourly rate

Agencies	Search/ Retrieval Fee	Redaction Fee	Copy Fee
Average	\$22.49	\$26.66	\$0.19
Median	\$21.00	\$21.00	\$0.20

⁶ Individual survey responses: one agency only charges for copying; one agency is primarily governed by the federal FOIA; and one agency’s fees for records is set in the SC Code of Laws.

⁷ Commercial rates for self-service black & white copies as of 4/1/2019: Kinkos \$0.08; Affordable Printing \$0.08; Office Depot (\$0.09); and Staples (\$0.14).

Several of the agencies provided additional fees in their FOIA fee schedules in order to respond to a request, such as a transfer fee for paper to electronic documents, audio recordings, certified copies, and computer printouts. In some cases, additional charges may be applied for actual costs incurred by the agency, to include fax/postage/ mailing; reproduction of oversized documents (i.e., posters/banners, manuals, brochures, blueprints, etc.); and reproduction of multimedia (CDs, DVDs, etc.).

In addition, the SIG noted that nine (26%) agencies included a FOIA request form that provided helpful information and directions, and defined exempted information, to assist the requestor in completing a FOIA request. One agency's FOIA request form even included an agreement of acknowledgement of the assessment fees to be paid, and deposit requirements.

C. Review and Analysis of Agencies' Initial Determination Timeline and FOIA Policies

A commonly asked question by the public in FOIA matters is, "How long will it take for a response to a FOIA request to obtain or view the records?"

Under [SC Code, §30-4-30\(C\)](#), a public body's response time to a written FOIA request should occur within 10 business days in determining the availability of documents and an estimated cost to fulfill the request, and for records more than 24 months old, the initial determination response time should occur within 20 business days. If the request is granted, the record must be provided or made available for inspection or copying within 30 calendar days, or 35 calendar days if the information was more than 24 months old. If a deposit is required, then the public body must provide the record within the same timeframe after the deposit is received.

The SIG's review and analysis of the study group's FOIA policies identified the following:

- Only eight (23%) of the 35 agencies' FOIA policies indicated an initial determination within 10 business days for records less than 24 months old.⁸
- Three (9%) of the 35 agencies indicated an initial determination of 15 business days for records less than 24 months old, which is inconsistent with the state's updated FOIA. Two of these agencies had outdated FOIA policies (2006, and 2011).⁹
- Two (6%) agencies indicated "requests for information will be processed expediently," with no further explanation to determine if it is consistent with the state's updated FOIA.
- Only seven (20%) of the 35 agencies indicated in their FOIA policy that for records over 24 months old the agency would make an initial determination within 20 business days.¹⁰
- Five (14%) agencies had outdated FOIA policies (2002, 2004, 2006, 2011, and 2016).

⁸ Note: This does not account for mutually agreed upon extensions between the requestor and the governmental agency.

⁹ Ibid.

¹⁰ Ibid.

IV. Survey Summary Analysis

The 40-question survey was administered to the study group with a ninety-seven percent (97%) response rate (34 out of 35 agencies). The survey incorporated various questions that provide a snapshot of each agency's FOIA process, and its effectiveness. In addition, the survey provided each agency the opportunity to convey challenges and/or inefficiencies in the current FOIA request process, as well as, suggest improvements.

The summary analysis is grouped into the following four categories: FOIA Fee Schedule Process; Agency Management of FOIA Requests; Agency Response to FOIA Requests: Accessibility, Timeliness, and Costs; Comparison of Media and Public FOIA Requests for FYs 2016-17 and 2017-18.

A. FOIA Fee Schedule Process

Of the 33 responding agencies, 18 agencies (55%) selected individually charged; 14 agencies (42%) selected all-inclusive; and one agency (3%) indicated it did not charge for the search, retrieval or redaction of records.



In contrast to the SIG's review of the 35 agencies' FOIA fee schedules, only six agencies (17%) indicated the fee for search, retrieval, or redaction of records was all-inclusive in one rate. Five agencies (14%) indicated the fee for search and retrieval of records was all-inclusive, but assessed a separate rate for redaction.

Fourteen agencies (42%) indicated that redaction was not combined with another fee; and three agencies (9%) indicated the search fee was not combined. Nine agencies (27%) indicated that fees for search, retrieval and redaction were all-inclusive. The remaining seven agencies (21%) indicated no fees were combined (4) or no fee was charged (3).



B. Agency Management of FOIA Requests

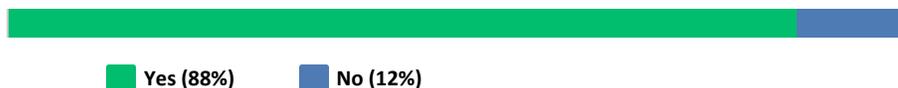
Thirty of the 34 responding agencies (88%) indicated FOIA requests were always received in writing. Three agencies (9%) indicated FOIA requests were received sometimes in writing, but could be communicated orally by phone. One agency (3%) indicated not applicable as a response.



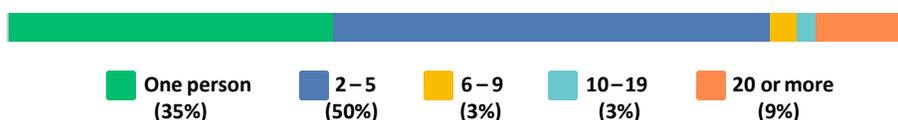
Thirty-one agencies (91%) maintained a FOIA request log. Three agencies (9%) indicated that a FOIA request log was not maintained. One agency commented it did not maintain a central log, but placed the requests in electronic folders and maintained by date. Several of the larger agencies/institutions indicated that, because some requests involved obtaining documents from various departments, FOIA logs may be kept in several locations, but not a central log for all FOIA requests.

Twenty-two agencies (65%) stored the official records both electronically and in hard copy format. Ten agencies (29%) indicated the records were maintained electronically, and only two agencies (6%) indicated the records were maintained in a hard copy format.

Thirty agencies (88%) had a dedicated staff person to address FOIA requests. Only four agencies (12%) did not have a dedicated staff person to address FOIA requests.



Seventeen agencies (50%) indicated between two and five employees were assigned to address FOIA requests. Twelve agencies (35%) indicated assigning only one person to handle FOIA requests. Two agencies (6%) indicated a range between 6 and 19 employees handled the FOIA requests. Three agencies (9%) indicated the process involved 20 or more employees. This does not preclude legal counsel was not involved in the process.



C. Agency Response to FOIA Requests: Accessibility, Timeliness, and Costs

Twenty-eight agencies (82%) provided the records to the requesting party in both hard copy and electronic format. Another five agencies (15%) provided the records electronically, and only one agency (3%) indicated the documents were provided in hard copy. The majority of the agencies, 29 (85%), provided initial determination notification within 10 business days to the requesting party for records less than 24 months old.

Twenty (59%) agencies indicated records were always made available for public inspection and copying and another five agencies (15%) indicated records were made available sometimes but sent the requester a copy. Sixteen agencies (47%) indicated the requesting party was always notified of the estimated cost to produce the records. While only six agencies (18%) indicated a deposit was always required before searching or making copies of records another 20 agencies (59%) indicated a deposit was required sometimes, and six agencies (18%) indicated a deposit was never required.

D. Comparison of Media and Public FOIA Requests for FYs 2016-17 and 2017-18

A comparison of media and public FOIA requests data before and after the implementation of the 2017 law revealed the number of FOIA requests from the media and the public remained relatively consistent over the past two years, with the majority of the agencies receiving less than 100 requests each year. For both media and public FOIA requests, two-thirds of the agencies' final production response time averaged less than 20 calendar days, consistent with the amended law. Although the majority of the agencies indicated less than \$500 was collected in fees each year, it does not account for the size of the FOIA request.

For media FOIA requests, over 73% of the agencies indicated none of the requests resulted in the requestor seeking injunctive relief for both years. Only nine agencies (26%) indicated the requestor sought injunctive relief by a circuit court in FY2017-18 and seven agencies (21%) for FY2016-17. Over 79% of the agencies indicated none of the FOIA requests resulted in the agency seeking injunctive relief for both years. Seven agencies (21%) sought injunctive relief by a circuit court in FY2017-18, and six agencies (18%) in FY2016-17.

For public FOIA requests, over 78% of the agencies indicated none of the requests resulted in the requestor seeking injunctive relief for both years. Only seven agencies (21%) indicated the requestor sought injunctive relief by a circuit court in both FY2017-18 and FY2016-17. Over 84% of the agencies indicated none of the requests resulted in the agency seeking injunctive relief for both years. Only five agencies (15%) sought relief by a circuit court during FY2017-18, and four (12%) agencies in FY2016-17.

V. Way Forward

The intent of this study was to review a group sampling of EB agencies and report the results to all EB agencies in order for each EB agency to conduct a top to bottom review of its FOIA policy, ensure its consistency with the 2017 FOIA, and make any necessary adjustments.¹¹

It further sought to address two of the most frequently asked questions by the public: (1) How is the cost associated with a FOIA request determined; and (2) How long does it take for a response to a FOIA request to obtain or view the records?

A. Summary of Study Group Fee Schedules

The SIG determined each member of the 35-agency study group complied with the requirement to post its fee schedule on its publicly available website.

As previously reported, only thirteen (37%) of the 35 agencies provided a complete fee schedule that included the cost to search, retrieve, and redact records for a FOIA request. While 22 agencies (63%) provided a fee schedule in some form with a specification of these costs, nine agencies (26%) listed the fees for the search, retrieval and redaction of records as the “lowest prorated hourly staff salary.” Even though the law states that production fees cannot exceed the prorated hourly wage of the lowest paid staff employee capable of performing the task, the information provided by these agencies could be clearer to provide the public sufficient information to estimate the cost of a FOIA request and therefore tailor the request to minimum fees.

As evidenced by the comparison of the study group’s fee schedules (Table 1), gaps exist in the specification of fees for individual FOIA processes among the agencies. A possible starting point in determining a uniform, if not all-inclusive fee for those without a defined fee schedule would be to use the study group’s average costs identified in Table 1. Based on the average hourly fee of \$22.49 for the search or retrieval of records, the average annualized salary of an employee conducting these processes is \$43,855. Similarly, the average hourly fee of \$26.66 for the redaction of records equated to an average annualized salary of \$51,987.

It is understood there will always be exceptions to this approach, particularly in the use of specialized IT resources and personnel, the use of a decentralized structure of multiple departments and staff conducting FOIA searches, or the use of multiple personnel in very large FOIA requests. However, to the extent possible agencies should strive to disclose publicly the fees charged for FOIA requests.

¹¹ **Disclaimer:** This is not a legal analysis performed by a lawyer of the law or its application in a particular circumstance, but a review of the study group’s public fee schedules, and based on information provided by the individual agencies.

B. Recommendation

It is the SIG's recommendation that each EB agency and public higher education institution utilize the findings in this study to conduct a review of its FOIA policy, and make any necessary adjustments consistent with the 2017 FOIA.