**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3254**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Taylor and Forrest

Document Path: l:\council\bills\agm\19848wab21.docx

Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Freedom of Information Act Review

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 House Prefiled

12/9/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 133](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 133](file:///h:\hj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3254_20201209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑23‑665 SO AS TO CREATE THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW WITHIN THE ADMINISTRATIVE LAW COURT, TO PROVIDE RELATED GENERAL FUNCTIONS, POWERS, AND DUTIES OF THE OFFICE AND THE COURT, AMONG OTHER THINGS, TO PROVIDE APPLICABLE PROCEDURES, AND TO EXEMPT DATA FROM VIDEO OR AUDIO RECORDINGS MADE BY LAW ENFORCEMENT VEHICLE‑MOUNTED RECORDING DEVICES OR DASHBOARD CAMERAS; TO AMEND SECTION 30‑4‑100, RELATING TO EQUITABLE REMEDIES AVAILABLE TO THE GENERAL PUBLIC TO ENFORCE PROVISIONS OF THE FREEDOM OF INFORMATION ACT, SO AS TO MAKE SUCH REMEDIES AVAILABLE FROM THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW, TO PROVIDE FOR APPEALS TO THE ADMINISTRATIVE LAW COURT, TO MAKE CONFORMING CHANGES CONCERNING THE AWARD OF ATTORNEYS’ FEES TO PREVAILING PARTIES, TO MAKE THESE PROVISIONS EFFECTIVE UPON THE EFFECTIVE DATE OF RELATED COURT RULES, AND TO MAKE THESE PROVISIONS ONLY APPLICABLE TO ACTIONS FILED AFTER THE EFFECTIVE DATE; AND TO AMEND SECTION 30‑4‑110, RELATING TO EQUITABLE REMEDIES AVAILABLE TO PUBLIC BODIES TO ENFORCE PROVISIONS OF THE FREEDOM OF INFORMATION ACT REVIEW, SO AS TO MAKE SUCH REMEDIES AVAILABLE FROM THE OFFICE OF FREEDOM OF INFORMATION ACT REVIEW, TO PROVIDE FOR APPEALS TO THE ADMINISTRATIVE LAW COURT, TO MAKE CONFORMING CHANGES CONCERNING THE AWARD OF ATTORNEYS’ FEES TO PREVAILING PARTIES, TO MAKE THESE PROVISIONS EFFECTIVE UPON THE EFFECTIVE DATE OF RELATED COURT RULES, AND TO MAKE THESE PROVISIONS ONLY APPLICABLE TO ACTIONS FILED AFTER THE EFFECTIVE DATE.

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 practices 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 Constitution of South Carolina, 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.A. Section 30‑4‑100 of the 1976 Code is amended to read:

“Section 30‑4‑100. (A) A citizen of the State may apply to the ~~circuit court~~ Office of Freedom of Information Act Review in the Administrative Law Court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the ~~chief administrative judge~~ director of the ~~circuit court~~ Freedom of Information Act Review Office must schedule an initial hearing within ten days of the service on all parties. If the hearing ~~court~~ officer is unable to make a final ruling at the initial hearing, ~~the court~~ he shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The ~~court~~ hearing officer may extend this time period upon a showing of good cause. The ~~court~~ hearing officer may order equitable relief as ~~it~~ he 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) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney’s fees and other costs of litigation specific to the request. If the person or entity prevails in part, the ~~court~~ hearing officer may in ~~its~~ his discretion award him reasonable attorney’s fees or an appropriate portion of those attorney’s fees.”

B. The provisions of this section take effect upon the effective date of practice and procedure rules promulgated by the Chief Judge of the Administrative Law Court pursuant to Section 1‑23‑665, as added by SECTION 1 of this act, and only are applicable to actions filed after that date.

SECTION 3.A. Section 30‑4‑110 of the 1976 Code is amended to read:

“Section 30‑4‑110. (A) A public body may file a request for hearing with the ~~circuit court~~ Office of Freedom of Information Act Review in the Administrative Law Court 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.

(B) 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 court~~ before a hearing officer or to intervene in an action previously filed.

(C) If a person or entity seeking relief under this section prevails, the ~~court~~ 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 there is a finding of good faith. The finding of good faith is a bar to the award of attorney’s fees and costs.

(D) If ~~a court~~ the 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 court’s determination be reversed on appeal.

(E) 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.

(F) If the ~~court~~ 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~~ he may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars.”

B. The provisions of this section take effect upon the effective date of practice and procedure rules promulgated by the Chief Judge of the Administrative Law Court pursuant to Section 1‑23‑665, as added by SECTION 1 of this act, and are applicable to actions filed after that date.

SECTION 4. This act takes effect upon approval by the Governor, except as otherwise provided in SECTION 2 and SECTION 3.

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