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May 23, 2012

The Honorable George E. "Chip" Campsen, III  
P.O. Box 142  
604 Gressette Building  
Columbia, SC 29201

Re: H.3235, Proposed Amendments to Freedom of Information Act (FOIA)

Dear Senator Campsen:

I am writing regarding the proposed amendments to FOIA under consideration by the Judiciary Committee. The current version of the H. 3235 will have a significant impact on the South Carolina Department of Health and Environmental Control (DHEC).

DHEC receives several hundred FOIA requests each month. Our FOIA staff works very hard to ensure customers receive access to requested documents quickly and at a reasonable cost. The changes proposed in H.3235 would require the agency to employ additional staff and purchase additional equipment to ensure compliance with FOIA. At the same time, the amount DHEC could charge requestors for producing documents would be significantly reduced. The proposed changes would shift the costs of producing documents under FOIA from the requestor to the South Carolina taxpayer.

#### A. Current FOIA Activity

In calendar year 2011, DHEC handled 3,370<sup>1</sup> FOIA requests. During the eighteen (18) months ending March 2012, FOIA staff photocopied an average of 35,605 pages per month. Additional pages were produced electronically. While some requests result in only a few pages being produced, other requests result in the production of thousands of pages. This is particularly likely in FOIA requests regarding issues of public concern such as environmental permitting or Certificate of Need decisions for health facilities, which are the frequent subject of requests.

DHEC's FOIA office operates primarily on a fee based system (i.e., charges paid by requestors). FOIA staff, with the exception of the FOIA director, is paid from fees associated with requests. The total personnel costs for the FOIA office in

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<sup>1</sup> This total does not include FOIA requests handled by the Office of Ocean and Coastal Resource Management.

2011 was just over \$234,000, which works out to an average cost per request to the agency of \$69.43, not including actual copy charges. To offset the cost of research, copying, scanning, and equipment charges, DHEC charges customers 25 cents per page produced for paper copies and charges on a sliding scale for electronic copies. Staff time to redact documents is charged separately.

DHEC does not currently charge a fee for requests resulting in less than twenty-five (25) pages. Therefore, many responses to FOIA requests are provided free to the public by DHEC. The FOIA office is largely self-sufficient and usually able to cover the majority of its costs under the current fee structure.

#### **B. Impact of H.3235**

The proposed changes to FOIA under H.3235 will significantly increase DHEC's cost to comply with FOIA. Our specific concerns are as follows:

1. **Right to Receive Electronic Documents.** H.3235 states, "Any person has a right to ... receive an electronic transmission of any public record...." This provision appears to create a right in FOIA requestors to receive requested documents in electronic form.

Many of DHEC's documents are not in an electronic form. It is the agency's goal to eventually have all documents in electronic form; however, that goal will not be accomplished for several years. Therefore, in many cases FOIA staff would be required to scan requested documents under the proposed amendment. The FOIA office is not currently equipped with sufficient scanning capability to support conversion of paper documents to electronic form. The cost to purchase a scanner for each of the FOIA office's three locations is estimated to be approximately \$15,000, and neither the current fee structure nor the proposed fee structure supports this expenditure.

2. **Time to Provide Documents.** Currently, there is no time limitation under FOIA for DHEC to provide documents. H.3235 would require DHEC to provide documents no later than thirty days from the date of the original request, unless the records are more than twenty-four months old in which case an additional forty-five days are allowed to produce the documents. While DHEC does not oppose a time limitation to produce documents under FOIA, the proposed deadlines would require the FOIA office to hire additional staff to comply.
3. **Allowable Fees.** The fees that may be charged under the proposed amendments to respond to FOIA requests appear limited to copy charges at the "prevailing commercial rate," which we understand to be about 7 cents per copy.

In reality, the costs to respond to a FOIA request include more than just the cost to make the resulting copies. DHEC's costs also include staff time associated with researching, gathering, and, in some cases, redacting information pursuant to statutory exemptions and protections. A mandatory rate of 7 cents per copy would reduce DHEC's funding for FOIA staff by over seventy percent. Under H.3235, DHEC would be forced to fund these costs from General Fund appropriations.

While the changes contemplated by H.3235 may not negatively impact small agencies, the current bill would have a significant impact on DHEC and other large agencies that process thousands of FOIA requests each year. Please consider amending the bill to allow flexibility in responding to FOIA requests and the ability to charge reasonable fees to cover the costs to respond.

Thank you for your consideration of these comments. I would welcome the opportunity to discuss these important matters with you or your staff should additional information be helpful.

Respectfully,

A handwritten signature in cursive script that reads "Catherine Templeton".

Catherine B. Templeton

cc: The Honorable Luke A. Rankin  
The Honorable Creighton B. Coleman  
The Honorable Floyd Nicholson  
Marshall Taylor, SC DHEC, General Counsel