

# GEORGIA'S SUNSHINE LAWS



**GEORGIA FIRST  
AMENDMENT  
FOUNDATION**

*your right to know*

## A Citizen's Guide to Open Government

Office of the Attorney General of Georgia

Thurbert E. Baker

Attorney General

In Cooperation with  
The Georgia First Amendment Foundation

Fourth Edition 2008

I am very pleased to sponsor this important publication aimed at educating citizens as to their rights under Georgia's "sunshine laws." I strongly believe that government operates best when it operates openly. The Attorney General's Office has long served as government's watchdog when it comes to the enforcement of open government laws, but citizens must also be ever vigilant in assuring that their rights in this area are observed by those who serve on their behalf. I hope that this pamphlet will assist them in that effort, and serve as a valuable aid to Georgians seeking access to their government.

Thurbert E. Baker  
Attorney General of Georgia  
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Hollie Manheimer, Executive Director  
Georgia First Amendment Foundation  
150 E. Ponce de Leon Ave., Suite 230  
Decatur, Georgia 30030-2553  
404.525.3646 • 404.377.0486 (Fax)  
info@gfaf.org or www.gfaf.org

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# GEORGIA'S "SUNSHINE LAWS"

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## A Citizen's Guide to Open Government

Georgia has a long and proud tradition of encouraging openness in governmental meetings and records. As Chief Justice Weltner stated in the case of *Davis v. City of Macon*: "Public men and women are amenable 'at all times' to the people, they must conduct the public's business out in the open."

A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. Justice Brandeis once said, "Sunlight is the best disinfectant."

Principles of openness in government are found in the Constitution of Georgia, the common-law of the State of Georgia, and our state statutes. The two Acts that apply to most meetings and records are known as the "Sunshine Laws." These consist of the Open and Public Meetings Act (O.C.G.A. §§ 50-14-1 through 6) and the Open Records Act (O.C.G.A. §§ 50-18-70 through 76). Complete copies of these statutes are found in the Appendices to this booklet.

The starting place under Georgia law for citizens seeking to attend meetings of governmental bodies or to inspect governmental records is the presumption that the meetings and records are open. For instance, O.C.G.A. § 50-14-1 (b) states: "Except as otherwise provided by law, all meetings ... shall be open to the public ..." Similarly, O.C.G.A. § 50-18-70(b) provides: "All public records ... except [as otherwise provided] shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen." The Attorney General has, historically, helped citizens enforce their rights under the Sunshine Laws and has issued numerous opinions concerning them. In 1998, the General Assembly of the State of Georgia amended both the Open Meetings Law and the Open Records Law to give the Attorney General specific authority to enforce the Sunshine Laws (O.C.G.A § 50-14-5 and § 50-18-73, as amended) in his discretion.

The purpose of this booklet is to provide a brief, general and non-technical discussion of Georgia's Sunshine Laws, so that the citizens of Georgia may better participate in open government.

Both the Open Meetings Law and the Open Records Law apply to all entities which are an “agency” of the state or local government in Georgia. In addition, the Public Records Law applies to associations whose members are themselves “agencies” if the association itself receives a substantial part of its budget from agencies.

The term “agency” is broadly defined in O.C.G.A. § 50-14-1(a)(1) to include the following:

- Every state department, agency, board, bureau, commission, public corporation, and authority;
- Every county, municipal corporation, school district and other political subdivision;
- Every department, agency, board, bureau, commission, authority and similar body of each county, municipal corporation or other political subdivision of the state;
- Every city, county, regional or other authority established pursuant to state law; and;
- Non-profit organizations that receive more than one-third of their funds from a direct allocation of state funds from the governing authority of an agency.

All private entities that carry out governmental functions are subject to the Sunshine Laws.<sup>1</sup>

## OPEN RECORDS

O.C.G.A. §§ 50-18-70

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### **A. What Records Are Available To The Public?**

Georgia’s Open Records Law provides the public with broad access to governmental records and documents.<sup>2</sup> The public has a right to see, inspect and copy all “public records.” “Public records” are broadly defined to include the following:

- Documents;
- Papers;
- Letters;
- Maps;
- Books;

- Tapes;
- Photographs;
- Computer-based or generated information; and
- Similar material prepared and maintained or received in the course of the operation of a public office or agency.<sup>3</sup>

Public records also include records received or maintained by a private person, firm, corporation or other private entity in the performance of a service or function for or on behalf of a public office or agency, unless the records are otherwise protected by specific statute or court order from disclosure.<sup>4</sup> Records prepared or maintained by a private entity in cooperation with public officials, or contemplating the use of public resources and funds are considered public records and are subject to the Open Records Law.<sup>5</sup>

The Law specifically designates “computer records” as public records subject to the Law. The Open Records Law mandates that if a county maintains a computerized index of county real estate deed records, the index must be printed and made available for public inspection no less than every 30 days.<sup>6</sup> Additionally, courts have held that government may not keep details of litigation settlements secret.<sup>7</sup>

The Open Records Law provides some limited exceptions; *see* O.C.G.A. § 50-18-72 in Appendix 1. Under the Open Records Law, these exclusions are subject to a narrow construction and only that portion of a public record to which the exclusion is directly applicable is exempted.<sup>8</sup>

The Law mandates that public records be available to “any citizen of this state” and must be available to non-residents as well.<sup>9</sup> It is irrelevant what the purpose of a particular request is. However, a party to a proceeding governed by the Georgia Administrative Procedure Act may not employ the Open Records Law to access public records pertaining to the proceeding without the prior approval of the presiding administrative law judge.

## **B. The Open Records Process**

Open records requests may be made to any custodian of the desired records. A written request is not required but is advisable to eliminate any dispute as to what was requested or when the request was made. A sample open records request is attached as Appendix 3 to this booklet.

The records custodian is allowed a “reasonable amount of time” to determine whether the records requested are subject to access under the Law.<sup>10</sup> However, the custodian must respond to all requests within three business days of receiving them.<sup>11</sup>

If the records exist and are subject to inspection but are not available within three business days, a written description of such records and a timetable for their inspection and copying must be provided within that time period.<sup>12</sup> Records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to unrequested or unavailable records.<sup>13</sup>

If access to a record is denied in whole or in part, the records custodian must provide in writing the specific legal authority exempting such record from disclosure.<sup>14</sup>

### **C. Appropriate Fees for Copies of Records**

Public agencies may charge a reasonable fee for copying public documents but usually may not charge more than 25¢ per page.<sup>15</sup> Agencies may also charge those requesting documents for search, retrieval and other administrative costs. Hourly charges for administrative tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request. No charge may be made for the first quarter hour of administrative time. And, agencies must provide copies of the requested documents “in the most economical means available.” The Georgia Supreme Court has held that no fee may be charged when a person seeks only to inspect records that are routinely subject to public inspection, such as deeds, city ordinances and zoning maps.<sup>16</sup> An agency also may not charge for time its attorneys spend advising whether records should be disclosed.

### **D. Penalties for Non-Compliance**

Anyone who “knowingly and willfully” fails or refuses to timely provide access to records not subject to exemption is guilty of a misdemeanor punishable by a fine not in excess of \$100.<sup>17</sup>

Any person, firm, corporation, or other entity may bring a civil action to enforce compliance with the Law. Moreover, the Attorney General may bring a civil or criminal action to enforce compliance with the Law, and may participate administratively to resolve an open government dispute.<sup>18</sup> In the course of bringing such action, the cost of attorney’s fees may be imposed on either party if the court determines that the party acted without substantial justification in either complying with the Law or in instituting the litigation.<sup>19</sup>

Georgia's Open Meetings Law<sup>20</sup> requires that state and local governmental bodies conduct their business so citizens can review and monitor their elected officials and others working on their behalf. The Law requires that government meetings be open to the public. The Law also requires governmental bodies to provide reasonable notice of all meetings.

## A. What Meetings Are Open?

The Open Meetings Act requires each of the following to transact business in the open:

- City councils;
- County commissions;
- Regional development authorities;
- Library boards;
- School boards;
- Commissions or authorities, such as hospital authorities, established by state or local governments;
- Planning commissions;
- Zoning boards;
- Most committees of the University System of Georgia (such as those involving grievances, disciplinary matters, athletic matters and other student-related matters not specifically related to education); and
- Non-profit corporations operating public hospitals.

In short, the Law applies to nearly every group that performs any function of a government entity. Very few governmental bodies are exempt from coverage. The following, however, are not explicitly covered by the Sunshine Laws, and Georgia courts have determined that they are governed by separate legal standards:

- The Georgia General Assembly or its committees (under the State Constitution, Art. III, Sec. IV, Para. XI, legislative sessions must be open to the public); and<sup>21</sup>
- Judicial proceedings including judicial branch agency and committee meetings (under State and Federal constitutional law, most court proceedings must be open to the public).<sup>22</sup>



## **B. What Actions Are Open To The Public?**

Most meetings of entities covered by the Law must be open to the public. Whenever a quorum of the members of an agency (again, broadly defined) meets for the discussion or presentation of official business or policy or takes official action, the meeting must be open to the public. This means public officials may not exclude the public from fact-finding and purely deliberative sessions simply because no final action is taken or anticipated. Even meetings conducted by written, telephonic, electronic, wireless or other virtual means must be open.<sup>23</sup>

Courts have held that committee meetings relating to policy or official business must be open to the public. The courts have also stated that a committee need not be exclusively composed of members of the agency to be deemed an “agency” subject to the Law.<sup>24</sup> Any official action of any type taken at a meeting which is not open is invalid, and may be set aside if an action is brought promptly.<sup>25</sup>

Although some law enforcement meetings and some meetings involving personnel discussions are exempt from the Law, the Law does not generally exempt agency adjudicative sessions. It also does not exempt budget sessions, coroner’s inquests or meetings regarding business or industry relations, federal programs, financial data, gifts, trusts, honorary degrees, licensing examinations, negotiations, collective bargaining of public employees, national or state security (subject to the law enforcement exemption), or student discipline and other student-related matters, not specifically related to education. Federal and state laws, however, prohibit disclosure of the identity of students in certain instances.

The Open Meetings Law provides exceptions for certain closed meetings and some confidential actions, and a government entity may close a meeting only if a specific statutory exception applies<sup>26</sup>, *see* O.C.G.A § 50-14-3 in the Appendix. Like the exceptions to the Open Records Law, exceptions to the Open Meetings Law should be narrowly construed so as not to undermine the general purpose of the Law.<sup>27</sup> The most commonly used exceptions are for personnel matters (but only for discussion and deliberation by the governmental entity, not for votes); attorney-client discussion of actual or potential lawsuits or claims<sup>28</sup>; and acquisition of real estate. Agencies may also close a meeting for the discussion of matters made confidential by statutes other than the Open Meetings Act.<sup>29</sup>

## **C. How Should Government Provide Access?**

The public must be given full access to all open meetings and may make video and audio recordings of all open meetings.<sup>30</sup>

In addition to mandating open meetings, the Law requires that agencies provide notice to the public in advance of all meetings, even emergency meetings.<sup>31</sup> That means agencies must make information available to the general public by posting a notice containing the information in a conspicuous location at the agency's regular meeting place. The notice must do more than simply meet the technical requirements of the Law. It must be sufficient to reasonably apprise a concerned party of an upcoming meeting and must not be misleading.

Meetings that are not held at the regularly posted time and place require more rigorous notice procedures. Agencies must give "due notice" of all such special or emergency meetings held at a time or place other than at the time and place prescribed for regular meetings. Such notice includes the posting at least 24 hours in advance, at the regular meeting place and oral notification to the newspaper which serves as the legal organ for the county. In counties where the legal organ is published less than four times a week, due notice also requires that notice be given to any local media outlets that make a written request to be so notified. Such outlets must be notified at least 24 hours in advance of the called meeting. In those rare circumstances where a meeting must be held upon less than 24 hours notice, either the county's legal organ or a newspaper having a circulation at least as high as that of the legal organ must be notified.

Prior to all meetings, including emergency meetings, the agency holding such meetings must make an agenda of all matters expected to be considered available upon request and must post the agenda at the meeting site as far in advance as possible within two weeks prior to the meeting.<sup>32</sup>

Minutes of all public meetings must be kept in writing and made available to the public for inspection no later than immediately following the next regular agency meeting. Such minutes must contain, at a minimum, the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. These minutes are subject to the Open Records Law after approval, unless voluntarily released before approval.

#### **D. Penalties for Non-Compliance**

All actions taken during meetings closed in violation of the Law are in violation of the Law and are void if challenged within 90 days.<sup>33</sup> Anyone who "knowingly and willfully" conducts or participates in a meeting without complying with every part of the Law is guilty of a misdemeanor punishable by a fine not in excess of \$500.<sup>34</sup> Additionally, public officials who participate in closed meetings in violation of the Law can be subject to recall.<sup>35</sup> In addition, failure to give adequate notice can result in the

invalidation of the proceedings, the issuance of legal injunctions and the requirement to pay the objecting party's legal costs.<sup>36</sup> Moreover, the Attorney General may bring a civil or criminal action to enforce compliance with the Law. As with the Open Records Law, a government agency may be liable for the attorney's fees of a party who brings a lawsuit to require compliance with the Law if that agency has acted without substantial justification.<sup>37</sup>

Lastly, the Law does not require that any meetings be closed. Agencies may close meetings only as permitted by a specific exemption provided by law. A meeting may not be closed to the public except by a majority vote of those agency members present. That portion of a meeting prior to closure by majority vote must be open to the public. An agency must state the specific reasons for closure of the meeting in the official minutes and the person presiding over such meeting must execute a notarized affidavit stating under oath that the closed portion of the meeting was devoted to matters within the exceptions provided by law and must identify the specific relevant exception.<sup>38</sup>

## CONCLUSION

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It is the public policy of Georgia that all agencies of our State should conduct business in the open and employ records that are available to every citizen. Experience has shown that openness is the best policy in government, both to help assure honest and forthright decisions by governmental officials, and to continue the perception that governmental decisions are made in the brightness of Georgia's sunshine.

# APPENDIX 1

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## The Open Records Law

### **50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access.**

- (a) As used in this article, the term “public record” shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. “Public records” shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency’s placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. Records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such agency, public agency, or public office. As used in this article, the term “agency” or “public agency” or “public office” shall have the same meaning and application as provided for in the definition of the term “agency” in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.
- (b) All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.
- (c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.
- (d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence of the time of the request.
- (e) In a pending proceeding under Chapter 13 of this title, the “Georgia Administrative Procedure Act,” or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-2000, or any personnel proceeding authorized under Part 7 and Part 11 of Article 25 of Chapter 2 of Title 20.

- (f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days. Where responsive records exist but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying, shall be provided within that period; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state staying or refusing the requested access to such records.
- (g) At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including internet access, subject to reasonable security restrictions preventing access to unrequested or unavailable records. (Ga. L. 1959, p. 88, §1; Code 1981, § 50-18-70; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, §1; Ga. L. 1992, p. 1061, §5; Ga. L. 1992, p. 1545, § 1; Ga. L. 1992, p. 2829, § 2; Ga. L. 1993, p. 1394, §2; Ga. L. 1993, p. 1436, §§ 1, 2; Ga. L. 1994, p. 618, § 1; Ga. L. 1998, p. 128, §50; Ga. L. 1999, p. 552, §§ 1,2.)

**50-18-71. Right of access to make photographs or reproductions.**

- (a) In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.
- (b) Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.
- (c) Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed 25¢ per page.
- (d) In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.
- (e) An agency shall utilize the most economical means available for providing copies of public records.
- (f) Where information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in

subsection (d) of this Code section.

- (g) Whenever any person has requested one or more copies of a public record and such person does not pay the copying charges and charges for search, retrieval, or other direct administrative costs in accordance with the provisions of this Code section:
- (1) A county or a department, agency, board, bureau, commission, authority, or similar body of a county is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;
  - (2) A municipal corporation or a department, agency, board, bureau, commission, authority, or similar body of a municipal corporation is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation;
  - (3) A consolidated government or a department, agency, board, bureau, commission, authority, or similar body of a consolidated government is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the consolidated government;
  - (4) A county school board or a department, agency, board, bureau, commission, authority, or similar body of a county school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;
  - (5) An independent school board or a department, agency, board, bureau, commission, authority, or similar body of an independent school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation; and
  - (6) A joint or regional authority or instrumentality which serves one or more counties and one or more municipal corporations, two or more counties, or two or more municipal corporations is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county if a county is involved with the authority or instrumentality or in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation if a municipal corporation is involved with the authority or instrumentality. This subsection shall apply whether or not the person requesting the copies has appeared to receive the copies. (Ga. L. 1959, p. 88, § 2; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 2; Ga. L. 1992, p. 1061, § 6; Ga. L. 1996, p. 313, § 1.)

**50-18-71.1. Approval of judge required for inspection of trial exhibits; reproduction of exhibits.**

- (a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.
- (b) In the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit: A photograph, photocopy, facsimile; or another reproduction.

- (c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost of materials or supplies and a reasonable charge for time spent producing the photograph, facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section 50-18-71. (Code 1981, § 50-18-71.1, enacted by Ga. L. 1992, p. 1061, § 7.)

#### **50-18-71.2. Estimate of copying fees as condition for assessment.**

Any agency receiving a request for public records shall be required to notify the party making the request of the estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 as a condition of compliance with the provisions of this article prior to fulfilling the request as a condition for the assessment of any fee; provided, however, that no new fees other than those directly attributable to providing access where records are made available by electronic means. (Code 1981, § 50-18-71.2, enacted by Ga. L. 1996, p. 313, § 2; Ga. L. 1999, p.5, § 3.)

#### **50-18-72. When public disclosure not required.**

- (a) Public disclosure shall not be required for records that are:
- (1) Specifically required by the federal government to be kept confidential;
  - (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;
  - (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;
  - (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated;
  - (4.1) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party, such statement to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:
    - (A) Has a personal, professional, or business connection with a party to the accident;

- (B) Owns or leases an interest in property allegedly or actually damaged in the accident;
  - (C) Was allegedly or actually injured by the accident;
  - (D) Was a witness to the accident;
  - (E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
  - (F) Is a prosecutor or a publicly employed law enforcement officer;
  - (G) Is alleged to be liable to another party as a result of the accident;
  - (H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;
  - (I) Is gathering information as a representative of a news media organization;
  - (J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, this subparagraph will apply only to accident reports on accidents that occurred more than 30 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or
  - (K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;
- (5) Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;
- (6)(A) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; and
- (6)(B) Engineers' cost estimates and pending, rejected, or deferred bids or proposals until such time as the final award of the contract is made or the project is terminated or abandoned. The provisions of this subparagraph shall apply whether the bid or proposal is received or prepared by the Department of Transportation pursuant to Article 4 of Chapter 2 of Title 32, by a county pursuant to Article 3 of Chapter 4 of Title 32, by a municipality pursuant to Article 4 of Chapter 4 of Title 32, or by a governmental entity pursuant to Article 2 of Chapter 91 of Title 36;



- (7) Notwithstanding any other provision of this article, an agency shall not be required to release those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency as that term is defined in paragraph (1) of subsection (a) of Code Section 50-14-1, or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to the person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process open to the public, it shall not be required to delay 14 days to take final action on the position. The agency shall not be required to release such records with respect to other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;
- (8) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, provided that this exception shall not have any application with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;
- (9) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;
- (10) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;
- (10.1) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm

water use by individual farms shall be subject to disclosure under this article;

- (10.2) Agricultural or food system records, data, or information that are considered by the Georgia Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;
- (10.3) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Georgia Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction.
- (11) Records that contain site specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;
- (11.1) An individual's social security number and insurance or medical information in personnel records, which may be redacted from such records;
- (11.2) Records that would reveal the names, home addresses, telephone numbers, security codes, or any other data or information developed, collected, or received by counties or municipalities in connection with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;
- (11.3)(A) An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, financial data or information, and insurance or medical information in all records, and if technically feasible at reasonable cost, day and month of birth, which shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such

person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that this news media organization exception for access to social security numbers and day and month of birth and the other protected information set forth in this subparagraph shall not apply to teachers, employees of a public school, or public employees as set forth in paragraph (13.1) of this subsection. For purposes of this subparagraph, the term "public employee" means any nonelected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions.

(11.3)(B) This paragraph shall have no application to:

- (i) The disclosure of information contained in the records or papers of any court or derived there from including without limitation records maintained pursuant to Article 9 of Title 11;
- (ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;
- (iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;
- (iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;
- (v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;
- (vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;
- (vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);
- (viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity; or
- (ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes.

- (11.3)(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10- 4. Any person injured thereby shall have a cause of action for invasion of privacy. Any prosecution pursuant to this paragraph shall be in accordance with the procedure in subsection (b) of Code Section 50-18-74.
- (11.3)(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.
- (11.3)(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;
- (12) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-3;
- (13) Records that would reveal the home address or telephone number, social security number, or insurance or medical information of employees of the Department of Revenue, law enforcement officers, judges, scientists employed by the Division of Forensic Sciences of the Georgia Bureau of Investigation, correctional employees, and prosecutors or identification of immediate family members or dependents thereof;
- (13.1) Records that reveal the home address, the home telephone number, or the social security number of or insurance or medical information about public employees or teachers and employees of a public school. For the purposes of this paragraph, the term "public school" means any school which is conducted within this state and which is under the authority and supervision of a duly elected county or independent board of education;
- (13.1) Records that are kept by the probate court pertaining to guardianships and conservatorships except as provided in Code Section 29-9-18;
- (14) Acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, to the extent such records would reveal the name,

home address, employment address, home telephone number, employment telephone number, or hours of employment of any individual or would otherwise identify any individual who is participating in, or who has expressed an interest in participating in, any such program. As used in this paragraph, the term "carpooling or ridesharing program" means and includes, but is not limited to, the formation of carpools, vanpools, or bus pools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

- (15)(A) Records, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:
- (i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;
  - (ii) Any plan for protection against terrorist or other attacks, which plan depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;
  - (iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks, which devices depend for their effectiveness in whole or in part upon a lack of general public knowledge; and
  - (iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts.
- (15)(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.
- (15)(C) As used in divisions (i) and (iv) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;
- (16) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (3) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point, which information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence

of a confidential surveillance or investigation;

- (17) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;
- (18) Records of the State Road and Toll Way Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon such toll project. Such financial records shall include but not be limited to social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;
- (19) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000 in the aggregate in a calendar year and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity; or
- (20) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard or SmartCard system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard or SmartCard or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name.

(b) This article shall not be applicable to:

- (1) Any trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency or to data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;
- (2) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a

governmental body or private entity until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This subsection applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works; or

- (3) Unless otherwise provided by law, contract, bid, or proposal, records consisting of questions, scoring keys, and other materials, constituting a test that derives value from being unknown to the test taker prior to administration, which is to be administered by the State Board of Education, the Office of Student Achievement, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test.

These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.

- (c)(1) All public records of hospital authorities shall be subject to this article except for those otherwise excepted by this article or any other provision of law.
- (c)(2) All state officers and employees shall have a privilege to refuse to disclose the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Human Resources or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity. Personally identifiable information shall mean any information which if disclosed might reasonably reveal the identity of such person including but not limited to the person's name, address, and social security number. The identity of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identity of the informant already has been disclosed otherwise.
- (d) This article shall not be applicable to any application submitted to or any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. This subsection shall not preclude law enforcement agencies from obtaining records relating to licensing and possession of firearms as provided by law.
- (e) This article shall not be construed to repeal:
  - (1) The attorney-client privilege recognized by state law to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; provided, however, attorney-client information may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which said proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue;

- (2) The confidentiality of attorney work product; or
  - (3) State laws making certain tax matters confidential.
- (f) (1) As used in this article, the term:
- (A) "Computer program" means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.
  - (B) "Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals, or other documentation.
- (2) This article shall not be applicable to any computer program or computer software used or maintained in the course of operation of a public office or agency.
- (g) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.
- (h) Within the three business days applicable to response to a request for access to records under this article, the public officer or agency having control of such record or records, if access to such record or records is denied in whole or in part, shall specify in writing the specific legal authority exempting such record or records from disclosure, by Code section, subsection, and paragraph. No addition to or amendment of such designation shall be permitted thereafter or in any proceeding to enforce the terms of this article; provided, however, that such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this article, whichever is sooner; provided, further, that the right to amend or supplement based upon discovery of an error may be exercised on only one occasion. In the event that such designation includes provisions not relevant to the subject matter of the request, costs and reasonable attorney's fees may be awarded pursuant to Code Section 50-18-73. (Ga. L. 1967, p. 455, § 1; Ga. L. 1970, p. 163, § 1; Code 1981, § 50-18-72, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1986, p. 1090, § 2; Ga. L. 1987, p. 377, § 1; Ga. L. 1988, p. 13, § 50; Ga. L. 1988, p. 243, § 3; Ga. L. 1989, p. 553, § 2; Ga. L. 1989, p. 827, § 1; Ga. L. 1990, p. 341, § 1; Ga. L. 1992, p. 1061, § 8; Ga. L. 1993, p. 968, § 1; Ga. L. 1993, p. 1336, § 1; Ga. L. 1993, p. 1669, § 1; Ga. L. 1995, p. 704, § 1; Ga. L. 1996, p. 6, § 50; Ga. L. 1997, p. 1052, § 2; Ga. L. 1998, p. 1652, § 1; Ga. L. 1999, p. 552, §§ 4, 4.1; Ga. L. 1999, p. 809, §§ 4, 5; Ga. L. 1999, p. 1222, §§ 1,2; Ga. L. 2000, p. 136, § 50; Ga. L. 2000, p. 1556, §§ 1,2; Ga. L. 2001, p. 4, § 50; Ga. L. 2001, p. 327, § 1; Ga. L. 2001, p. 331, § 1; Ga. L. 2001, p. 491, § 1; Ga. L. 2001, p. 820, § 13.; Ga. L. 2002, p. 415, § 50; Ga. L. 2003, p. 602, § 1; Ga. L. 2003, p. 880, § 2; Ga. L. 2004, p. 107, § 22(10); Ga. L. 2004, p. 161, § 15; Ga. L. 2004, p. 341, § 1A; Ga. L. 2004, p. 410, § 9; Ga. L. 2004, p. 770, § 1; Ga. L. 2005, p. 334, § 30-2; Ga. L. 2005, p. 558, § 1; Ga. L. 2005, p. 595, § 1; Ga. L. 2005, p. 660, § 11; Ga. L. 2005, p. 1133, § 1; Ga. L. 2006, p. 72, § 50; Ga. L. 2006, p. 536, § 1; Ga. L. 2007 Act 30 § 1; Ga. L. 2007, Act 49, § 1.).

**50-18-73. Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.**

- (a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such



actions may be brought by any person, firm, corporation or other entity. The Attorney General shall also have authority to bring such actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this article.

- (b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in institution the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole that is made in the proceeding for which fees and other expenses are sought.
- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information. (Code 1981, § 50-18-73, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 4; Ga. L. 1992, p. 1061, § 9; Ga. L. 1998, p. 595, § 2.)

**50-18-74. Penalty for violations; procedure for commencement of prosecution.**

- (a) Any person knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.
- (b) A prosecution under this Code section may only commence by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40, which citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance. (Code 1981, § 50-18-74, enacted by Ga. L. 1999, p. 552, § 5.)

**50-18-75. Confidentiality of communications between Office of Legislative Counsel and certain persons.**

Communications between the Office of Legislative Counsel and the following personas shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege. (Code 1981, § 50-18-75, enacted by Ga. L. 1988, p. 243, § 5.)

**50-18-76. Written matter exempt from disclosure under Code Section 31-10-25.**

No form, document, or other written matter that is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk or any court prior to filing with the Department of Human Resources shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection. (Code 1981, § 50-18-76, enacted by Ga. L. 1991, p. 1943, § 1.)

## **50-18-77. Inapplicable to public records.**

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law. (Code 1981, § 50-18-77, enacted by Ga. L. 1999, p. 809, § 6.)

# **APPENDIX 2**

## **The Open and Public Meetings Law**

### **50-14-1. Meetings to be open to public; limitation an action to contest agency action; recording, notice of time and place; access to minutes; telecommunications conferences.**

(a) As used in this chapter, the term:

(1) “Agency” means:

- (A) Every state department, agency, board, bureau, commission, public corporation, and authority;
- (B) Every county, municipal corporation, school district, or other political subdivision of this state;
- (C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
- (D) Every city, county, regional, or other authority established pursuant to the laws of this state; and
- (E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing authority of any agency as defined in this paragraph and which allocation constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, whoever, this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a sub agency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) “Meeting” means the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business, or policy to the governing body are to be formulated, presented, or discussed. The assembling together of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities under the jurisdiction of such agency or for the purposes of meeting with the governing

bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and at which no final official action is to be taken shall not be deemed a "meeting."

- (b) Except as otherwise provided by law, all meetings as defined in subsection (a) of the Code section shall be open to the public. Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting that is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken, provided that any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.
- (c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual, sound, and visual and sound recording during open meetings shall be permitted.
- (d) Every agency shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted and maintained in a conspicuous place available to the public at the regular meeting place of the agency. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting. Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meetings, the agency shall give due notice thereof. "Due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and giving of written or oral notice at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in said county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly "due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least 24 hours in advance of the called meeting. When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to said county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required permitted by this subsection may be given by telephone.
- (e)(1) Prior to any meeting, the agency holding such meeting shall make available an agenda of all matters expected to come before the agency at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

- (e)(2) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting of any agency. The minutes of a meeting of any agency shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular meetings of the agency; provided, however, nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Said minutes shall, as a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded and in all other cases it shall be presumed that the action taken was approved by each person voting for or against a proposal shall be recorded and in all other cases it shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.
- (f) An agency with state-wide jurisdiction shall be authorized to conduct meetings by telecommunications conference, provided that any such meeting is conducted in compliance with this chapter. (Code 1981, § 50-14-1, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, §§ 1, 2; Ga. L. 1993, p. 784, § 1; Ga. L. 1999, p. 549, §§ 1,2.)

#### **50-14-2. Certain privileges not repealed.**

This chapter shall not be construed so as to repeal in any way:

- (1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and
- (2) Those tax matters that are otherwise made confidential by state law. (Code 1981, § 50-14-2, enacted by Ga. L. 1988, p. 235, § 1.)

#### **50-14-3. Excluded proceedings.**

This chapter shall not apply to the following:

- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
- (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition said board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;
- (3) Meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings;
- (4) Meetings when any agency is discussing the future acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a

meeting; provided, however, the disclosure of such portions of the minutes as would identify real estate to be acquired may be delayed until such time as the acquisition of the real estate has been completed, terminated, or abandoned or court proceedings with respect thereto initiated;

- (5) Meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law;
- (6) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee but not when receiving evidence or hearing argument on charges filed to determine disciplinary action or dismissal of a public officer or employee. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;
- (7) Adoptions and proceedings related thereto; and
- (8) Meetings of the board of trustees or the investment committee of any public retirement system created by Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and
- (9) Meetings when discussing any records that are exempt from public inspection or disclosure pursuant to paragraph (15) of subsection (a) of Code Section 50-18-72, when discussing any information a record of which would be exempt from public inspection or disclosure under said paragraph, or when reviewing or discussing any security plan under consideration pursuant to paragraph (10) of subsection (a) of Code Section 15-16-10. (Code 1981, § 50-14-3, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 3; Ga. L. 1997, p. 44, § 2; Ga. L. 2003, p. 880, § 1; Ga. L. 2006, p. 560, § 4.)

#### **50-14-4. Procedure when meeting closed.**

- (a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.
- (b) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the chairperson or other person presiding over such meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception. (Code 1981, § 50-14-4, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1999, p. 549, § 3.)

#### **50-14-5. Jurisdiction to enforce chapter.**

- (a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole that is made in the proceeding for which fees and other expenses are sought.
- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information. (Code 1981, § 50-14-5, enacted by Ga. L. 1988, p.235, § 1; Ga. L. 1992, p. 1061, § 4; Ga. L. 1998, p. 595, § 1.)

#### **50-14-6. Violation of chapter; penalty.**

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500. (Code 1981, § 50-14-6, enacted by Ga. L. 1988, p. 235, § 1.)

# APPENDIX 3

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## Sample Open Records Request

Note: Delivery should be by hand delivery or by certified mail-return receipt requested.

[WRITER'S LETTERHEAD]

[DATE]

[CUSTODIAN'S NAME]

[AGENCY'S NAME]

[STREET ADDRESS]

[CITY, STATE, ZIP]

Dear \_\_\_\_\_:

Pursuant to the Georgia Open Records Law (O.C.G.A. § 50-18-70 et seq.) (the "Law"), you are hereby requested to make available for review and copying all files, records and other documents in your possessions that refer, reflect or relate to \_\_\_\_\_. This request includes, but is not limited to, all documents, notes, correspondence and memoranda evidencing \_\_\_\_\_, and all communication and correspondence in whatever tangible medium between and among \_\_\_\_\_ and \_\_\_\_\_.

If this request is denied in whole or in part, you are required by O.C.G.A. § 50-18-72(h) to cite in writing the specific statutory exemption upon which you have relied, as required by law. We also ask that you release all separate portions of otherwise exempt material. Please waive any costs associated with this request, or first inform us about such costs as required by Georgia law.

As you know, the Law requires a response by you within three business days of your receipt of this letter and provides sanctions for non-compliance. I look forward to hearing from you.

Sincerely,

[YOUR NAME]

[YOUR TITLE]

[YOUR FAX NUMBER]

# ENDNOTES

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1. *Cent. Atlanta Progress, Inc. v. Baker*, 278 Ga. App. 733 (2006)
2. O.C.G.A. § 50-18-70; *Athens Newspapers, LLC v. Unified Gov't of Athens-Clarke County*, 284 Ga. App. 465 (2007), cert. granted by Ga. Supreme Court, September 26, 2007 (“[T]he Act must be broadly construed to effect its remedial and protective purposes.”)
3. O.C.G.A. § 50-18-70 (a)
4. O.C.G.A. § 50-18-70 (a); *Hackworth v. Atlanta Bd. Of Educ.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994); *Athens Newspapers, LLC v. Unified Gov't of Athens-Clarke County*, 284 Ga. App. 465 (2007), cert. granted by Ga. Supreme Court, September 26, 2007
5. *Cent. Atlanta Progress, Inc. v. Baker*, 278 Ga. App. 733 (2006)
6. O.C.G.A. § 50-18-70 (c)
7. *Mullins v. City of Griffin*, 886 F. Supp. 21 (N.D. Ga. 1995)
8. O.C.G.A. § 50-18-72(g); *City of Brunswick v. Atlanta Journal-Constitution*, 214 Ga. App. 150 (1994); *City of Atlanta v. Corey Entm't, Inc.*, 278 Ga. 474 (2004)
9. 1993 *Op. Atty. Gen.* 93-27
10. O.C.G.A. § 50-18-70(f)
11. O.C.G.A. § 50-18-70(f); *Athens Newspapers, LLC v. Unified Gov't of Athens-Clarke County*, 284 Ga. App. 465 (2007), cert. granted by Ga. Supreme Court, September 26, 2007; *Wallace v. Greene County*, 272 Ga. App. 776 (2005)
12. O.C.G.A. § 50-18-70(f)
13. O.C.G.A. § 50-18-70 (g)
14. O.C.G.A. § 50-18-72 (h); *Athens Newspapers, LLC v. Unified Gov't of Athens-Clarke County*, 284 Ga. App. 465 (2007), cert. granted by Ga. Supreme Court, September 26, 2007; *Hoffman v. Oxendine*, 268 Ga. App. 316 (2004)
15. O.C.G.A. § 50-18-71 (c)
16. *McFrugal Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992); *Theragenics Corp. v. Dept. of Natural Resources*, 244 Ga. App. 829 (2000)
17. O.C.G.A. § 50-18-74(a)
18. O.C.G.A. § 50-18-73(a)
19. O.C.G.A. § 50-18-73(b)
20. O.C.G.A. § 50-14-1(E)(2)



21. *Coggin v. Davey*, 233 Ga. 407 (1975)
22. 1979 Op. Atty. Gen., 79-25; *Page v. Lumpkin*, 249 Ga. 576 (1982); *In re Motion of the Atlanta Journal-Constitution*, 271 Ga. 436 (1999)
23. *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 875 (2001)
24. *See Jersawitz v. Fortson*, 213 Ga. App. 796 (1994)
25. *See* O.C.G.A. § 50-14-1(b)
26. *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 873 (2001)
27. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 707 (2006)
28. The Georgia Supreme Court has determined that the attorney-client exception to the Open Meetings Law applies to discussions of potential litigation in limited circumstances. The Court has stressed that “potential litigation” does not include an “unrealized or idle threat of litigation.” Rather, to close a meeting to under the attorney-client exception to discuss potential litigation, the government entity must show “a realistic and tangible threat of legal action against it or its officer[s] or employee[s], a threat that goes beyond a mere fear or suspicion of being sued.” The Court provided a non-exhaustive list of factors for determining whether a tangible threat of litigation exists, including (1) a formal demand letter or other writing showing an intent to sue; (2) prior or ongoing litigation between the parties; or (3) proof that a party has retained an attorney and expressed an intent to sue. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 707 (2006) (quoting *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 873 (2001))
29. *See* 1995 Op. Att’y Gen U95-22
30. O.C.G.A. § 50-14-1(c)
31. O.C.G.A. § 50-14-1(d)
32. O.C.G.A. § 50-14-1(e)(1)
33. O.C.G.A. § 50-14-1(b); *Moon v. Terrell County*, 249 Ga. App. 567, 569 (2001)
34. O.C.G.A. § 50-14-6
35. *Steele v. Honea et al.*, 261 Ga. 644, 646 (1991)
36. O.C.G.A. § 50-14-5(a), (b); *Howard v. Sumter Free Press, Inc.*, 272 Ga. 521 (2000)
37. O.C.G.A. § 50-14-5(b); *Moon v. Terrell County*, 260 Ga. App. 433, 435 (2003)
38. O.C.G.A. § 50-14-4(b)

# OPEN GOVERNMENT RESOURCES

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Georgia First Amendment Foundation, (404) 525-3646, [www.gfaf.org](http://www.gfaf.org)

- "Georgia Public Schools and the Open Records Act," 1st edition, 2007.
- "Georgia Law Enforcement and the Open Records Act," 2nd edition, 2005.
- "How much open government is there in Georgia?," 1999.

Reporter's Committee for Freedom of the Press, (703) 807-2100, [www.rcfp.org](http://www.rcfp.org)

- "Access to Electronic Records," 2003.
- "Electronic Access to Court Records," 2007.
- "How to Use the Federal FOI Act," 9th edition, 2004.
- "The Open Government Guide," 2006.
- "Can we tape? A practical guide to taping conversations in the fifty states," 1996.
- "Police records: A guide to effective access in the fifty states," 1997.
- "Tapping Official Secrets: The Door to Open Government in Georgia," 1997.

Student Press Law Center, (703) 807-1904, [www.splc.org](http://www.splc.org)

- "Covering Campus Crime," 3rd edition, 2000.

League of Women Voters, (202) 429-1965, [www.lwv.org](http://www.lwv.org)

- Looking for Sunshine: Protecting Your Right to Know," 2006.
- "Observing Your Government in Action," 2007.

Society for Professional Journalists, (317) 927-8000, [www.spj.org](http://www.spj.org)

- "Open Doors: Accessing Government Records," 2004.

Georgia Press Association, (770) 454-6776, [www.gapress.org](http://www.gapress.org), (770) 454-6776

- "A Pocket Guide to Georgia Sunshine Laws," 1996.
- "A Communicator's Outline of Georgia Law," 1995-96.



**GEORGIA FIRST  
AMENDMENT  
FOUNDATION**

*your right to know*

For more information on  
Georgia's Government Sunshine Laws, contact the following:

Hollie Manheimer, Executive Director  
Georgia First Amendment Foundation  
150 E. Ponce de Leon Ave., Suite 230  
Decatur, Georgia 30030-2553  
404.525.3646 • 404.377.0486 (Fax)  
info@gfaf.org or <http://www.gfaf.org>

Office of the Attorney General of Georgia  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334-1300  
404.656.7298 or <http://law.ga.gov>