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# Georgia's Open Meetings/Open Records Laws

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A Guide for Public Librarians  
October 2012

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## Introduction

Public libraries in Georgia are entities of state government. As such, they are subject to the state's Open Meetings Act and Open Records Act. Understanding these laws and their applicability to public libraries is important for administrators, trustees, and rank and file employees.

This guide does not take the place of legal representation or advice of counsel. Rather, this information is compiled for the purpose of generating awareness and aiding the understanding of the library's legal responsibilities related to public access to meetings and records.

The concepts of freedom of information and public access stem from America's democratic form of government. 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.

In 1976, the federal government enacted the Sunshine Act, which established a presumption that government information is open to the public unless expressly excluded by provisions in the law. 5 U.S.C. § 552(b). Today all fifty states have passed open government laws.

Georgia's initial open meetings law was enacted in 1972, prior to its federal counterpart, and the state's first open records law dates back to 1959. Georgia's

General Assembly demonstrated a commitment to open government in 1998 when it amended the access laws to place enforcement power in the hands of the Georgia Attorney General. In 2012, the legislature again amended the open meetings and open records laws for the purpose of promoting compliance by making the requirements clearer and easier to understand.

Public libraries in the state of Georgia are, without doubt, governmental entities subject to the Open Meetings Act and Open Records Act. While compliance with these laws may seem tedious or burdensome, the underlying goals of open government laws coincide almost directly with principle tenet of the “library faith”—the belief that public libraries provide crucial support in celebrating and preserving democratic society. Of course, there will abusers and individuals who utilize these laws for purposes of harassment. However, the shared ideals of public librarians and those who promote open access to government information make understanding and complying with the state’s open government statutes a foremost concern to those who administer, govern, and manage public libraries.

Part I of this guide sets forth the basic requirements of the Open Meetings and Open Records Acts as applied to public libraries. Part II describes real world situations in which the public access laws affect public libraries, identifies common pitfalls, and suggests ways to comply. The entire texts of pertinent statutes as well as a summary of the 2012 amendments are included in the appendices.

# Part I

## Public Library Board Meetings

### What type of meeting is subject to the law?

Georgia's open meetings law applies to meetings of the governing authority of every "agency" including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency. O.C.G.A. § 50-14-1(a)(1). The law defines "meeting" as the gathering of a quorum of the members of the governing body or any of its committees where official business is considered. O.C.G.A. § 50-14-1(a)(3)(A). Therefore, meetings of the public library's board of trustees and committees thereof are covered.

The law does not cover: inspections of physical facilities or property, state-wide meetings or training, meetings with other agencies, travel, and social or ceremonial events. O.C.G.A. § 50-14-1(a)(3)(B). However, no official business is permitted at these gatherings.

### What type of public notice is required prior to a meeting?

Notice of the time, place, and date of any regular meeting must be given to the general public at least one week in advance. O.C.G.A. § 50-14-1(d)(1). The notice should be posted in a conspicuous place at the regular meeting place of the library board as well as on the library's website. While not specifically required by the statute, providing notice to the media is a good idea.

Special meetings can be held with at least 24 hours' notice. O.C.G.A. § 50-14-1(d)(2). Unlike regular meetings, special meetings require immediate notification to the county's "legal organ."

Under certain circumstances, a special meeting may be held without 24 hours' notice. O.C.G.A. § 50-14-1(d)(3). However, notice to the legal organ is required and must include the reason for holding the meeting with less than 24 hours' notice.

### **When must the meeting agenda be published and through what means?**

An agenda of all matters expected to come before the board must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting. O.C.G.A. § 50-14-1 (e)(1). However, if a particular issue is not included on the posted agenda it may still be considered by the board if it is deemed necessary to address it. Agendas for meetings should be specific enough to advise the public of the matters expected to come before the board.

### **When must meeting minutes be made available and what information must be included?**

Summary minutes, final minutes, and executive session minutes are required for every meeting, including committee meetings. O.C.G.A. § 50-14-1(e)(2).

Summary minutes must contain a list of the subjects acted on and those members present at the meeting and must be made available to the public for inspection within two business days of the adjournment of a meeting. O.C.G.A. § 50-14-1(3)(2)(B). Final minutes must state what agency members were present, describe

each motion, state who made and seconded a motion, and record all votes. If the vote is not unanimous, the votes of the participants must be recorded.

For emergency meetings (i.e., meetings with less than 24 hours' notice), the minutes must describe the notice given and the reason for the emergency. O.C.G.A. § 50-14-1(d)(3).

Meeting minutes must also show executive sessions. Executive session minutes are not released to the public. They are used in court if there is a dispute. O.C.G.A. § 50-14-1(e)(2).

### **When may a library board go into executive session?**

Although there are numerous exceptions to the requirements of the open meetings law, there are three primary reasons why a library board would lawfully hold a closed meeting. These reasons are: (1) to discuss pending or potential litigation with legal counsel; (2) to discuss the acquisition of real estate by the library; or (3) to discuss hiring, compensation, evaluation, or disciplinary action for a specific public officer or employee. O.C.G.A. § 50-14-3

### **Litigation**

The attorney-client privilege allows the library board to meet with its attorney to discuss pending or potential lawsuits or claims against or by the library in a closed meeting. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, the attorney representing the library in the pending or potential lawsuit **must be present**. Second, a lawsuit by or against the library must already be filed, or there must be a tangible likelihood of



a lawsuit being filed. A mere threat to take legal action against the library is not enough to close a meeting to discuss a potential lawsuit. In order to determine whether a threat to sue the library is a potential lawsuit that may be discussed in an executive session, board members should ask the following questions:

1. Is there a formal demand letter or something else in writing that presents a claim against the library and indicates a sincere intent to sue?

2. Is there previous or preexisting litigation between the library and the other party or proof of ongoing litigation on similar claims?

3. Is there proof that the other party has hired an attorney and expressed intent to sue?

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.

### **Acquisition of Real Estate**

Board members may close a meeting to discuss the purchase of real estate by the library. The exception applies only when the library acquires property, not when it sells property. Additionally, it applies only when the library is purchasing real property. The exemption does not apply when the library purchases personal property, such as vehicles, equipment, or supplies.

### **Employment**

Board members may close the portion of the meeting during which they are deliberating on hiring, appointing, compensating, disciplining, or dismissing an employee. O.C.G.A. § 50-14-3(b)(2). However, any portion of a meeting during

which the board receives evidence or hears arguments involving disciplinary actions must be open. The meeting may be closed to interview applicants for the position of library director. Note however, that records which identify persons applying for or under consideration for employment as library director are subject to inspection and copying at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position. O.C.G.A. § 50-17-72(a)(11). Moreover, all documents concerning as many as three persons under consideration whom the board has determined to be the best qualified for the position shall be subject to inspection and copying. O.C.G.A. § 50-17-72(a)(11).

### **What are the procedural requirements for going into executive session?**

All executive sessions must take place within a properly advertised open meeting. O.C.G.A. § 50-14-4. Going into executive session requires a vote. The regular minutes must show the specific reason for closing the meeting, those present, and those voting for closing the meeting. Going into executive session also requires the board chair to execute a sworn affidavit showing the basis for the executive session and that the closed part of the meeting was limited to the identified activity. O.C.G.A. § 50-14-4(b)(1). For model affidavit, *see* Fig. 1. The chair has the duty to keep the meeting limited to the proper purposes of the closed meeting, and, if it is not, to adjourn the closed meeting. O.C.G.A. § 50-14-4(b)(2).

Only those with an actual “need to know” should attend the closed portion of the meeting. If a session is closed, it must be closed to everyone not necessary to

consideration of the subject of the closed meeting. *See Jersawitz v. Fortson*, 213 Ga.App. 796, 446 S.E.2d 206 (1994); 1998 Unofficial AG Op. U98-3.

Fig. 1

**MODEL EXECUTIVE SESSION AFFIDAVIT**  
[A copy of the affidavit must be filed with the minutes of the open meeting]  
\_\_\_\_\_  
PUBLIC LIBRARY BOARD OF TRUSTEES  
AFFIDAVIT OF PRESIDING OFFICER

\_\_\_\_\_, Chair/President of the \_\_\_\_\_ Public Library Board of Trustees, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1. The \_\_\_\_\_ Public Library Board of Trustees met in a duly advertised meeting on \_\_\_\_\_, 20\_\_.
2. During such meeting, the Board voted to go into executive session.
3. The executive session was called to order at \_\_\_\_\_ a.m./p.m.
4. The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:  
\_\_\_\_ Consultation with the board or library's attorney to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the board, the library, any board officer/library employee or in which the library, or any board officer/library employee may be directly involved as provided in O.C.G.A. § 50-14-2(1);  
\_\_\_\_ Voting on settlement of pending or potential litigation O.C.G.A § 50-14- 1(b)(1)(A);  
\_\_\_\_ Discussion or voting on authorizing negotiations to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(B);  
\_\_\_\_ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a library employee as provided in O.C.G.A. §50-14-3(b)(2).  
\_\_\_\_ Interviewing candidates for library director as provided in O.C.G.A, §50-14-3(b)(2);
5. \_\_\_\_ During the course of the closed session devoted to exempt topics, an incidental remark regarding a non-exempt topic or an attempt to discuss a non-exempt topic was made.  
\_\_\_\_ The attempt was immediately ruled out of order and the attempt to discuss same ceased immediately.  
\_\_\_\_ The attempt was immediately ruled out of order. However, the comments did not cease, so the closed/executive session was immediately adjourned without discussion or action being taken regarding any non-exempt topic.
6. Minutes were taken of this meeting and will be filed and held for in camera inspection only.

This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Chair/President  
\_\_\_\_\_  
Public Library Board of Trustees

Sworn to and subscribed  
Before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Notary Public \_\_\_\_\_

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These materials are provided as general information only. No legal advice is being given by the Georgia Public Library Service, the Board of Regents of the University System of Georgia, or any other person. You should consult with your attorney on all legal matters.

### **Voting during executive session?**

Votes may be taken in certain properly convened executive sessions.

However, any vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, is not binding until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote. Voting on all personnel matters must be in an open meeting. O.C.G.A. § 50-14-3(b)(1) & (2).

### **May board meetings be held via telephone or teleconference?**

The General Assembly has approved of certain governmental meetings being held by teleconference. O.C.G.A. § 50-5-1(a). Prior to the 2012 amendments to the Open Meetings Act, that statute seemed to be applicable to public library boards. However, the new law specifies that an agency without state-wide jurisdiction may conduct public meetings by teleconference only under “emergency conditions” or when a participant cannot attend in person because of health reasons or absence from the jurisdiction O.C.G.A. § 50-14-1(g). Therefore, except for instances described in these limited situations, board members must attend meetings in person.

### **What are the consequences of non-compliance with the Open Meetings Act?**

Georgia’s Attorney General has the power to enforce the law in civil or criminal actions. The stated goal of the Attorney General’s office is to obtain compliance, not to sanction. Nevertheless, violations of the law can lead to a \$1,000

fine for a first violation and a \$2,500 fine for each additional violation within 12 months. O.C.G.A. § 50-14-6. The standard for a civil violation is negligence. The standard for a criminal violation (a misdemeanor) is willfulness. In addition, a violator may be found liable for attorney's fees.

Citizens can also bring civil actions in superior court in order to obtain compliance with the law.

## **Library Records**

### **What documents are covered by the Open Records Act?**

“Public record' means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.” O.C.G.A. § 50-18-70(b)(2).

### **Are personnel records subject to disclosure under the Open Records Act?**

Yes. Any exempt material in personnel files, such as social security numbers, medical information, home address and telephone number, or information relating to the designation of beneficiaries, may be redacted. O.C.G.A. § 50-17-72(a)(20)(A).

### **Are text messages and email subject to disclosure?**

Georgia’s Open Records Act applies to electronic data including emails and text messages. O.C.G.A. §§ 50-18-71(g) and (h). While the statute does not specify, the Georgia Attorney General’s office takes the position that all email and text messages concerning the agency’s business are open regardless of whether they were generated from a personal account. Likewise, according to the Attorney General’s office, all email and text messages created or kept on the library’s equipment or devices are subject to disclosure regardless of subject matter.

## **What is the timeframe in which the library must respond to an open records request?**

Documents that are available must be produced within three business days from the request. If the requested documents exist but are not available for production within three days, the library must provide to the requester (within the three-day window) a description of the records and a timetable for when the records will be available for inspection or copying. O.C.G.A. § 50-18-71(b)(1)(A). For sample three-day letter, *see* Fig. 2.

## **What if a request is made for documents that do not exist?**

The library is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request. O.C.G.A. § 50-18-71(b)(1)(A). However, requests may be made for documents that do not currently exist but will exist in the future. For example, if an individual requested copies of minutes of future board meetings, the board would be obliged to provide copies of the minutes as they come into existence.

In addressing requests for electronic data, the library may not refuse to produce on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into the library's computer system if these commands or instructions can be executed using existing computer programs that the library uses in the

ordinary course of business to access, support, or otherwise manage the records or data. O.C.G.A. § 50-18-71(f).

### **What if a requested document is an exception to the Open Records Act?**

The library's decision-maker must determine whether the requested documents are subject to an exception to the open records law. The exceptions are too numerous to list here but can be found at O.C.G.A. § 50-18-72 (*See Appendix B for full text of the statute.*) In making a determination on the applicability of an exception to the Open Records Act, the library decision-maker should give careful consideration to the request, keeping in mind that the rule is that the record is open; the exceptions for not having to release a document are construed narrowly.

Once it has been determined that all or part of a document falls under one of the legal exceptions, the library must provide, in writing, the specific legal authority excepting the record from disclosure by code section, subsection, and paragraph. O.C.G.A. § 50-17-71(d). If a requested document contains both open and excepted information, the records custodian must still release the document but may redact or mark out the excepted information. O.C.G.A. § 50-18-72.

### **How may requests for records be made to the library?**

The Open Records Act provides that requests may be made orally or in writing (including email and fax). O.C.G.A. § 50-18-71(b)(1)(B). However, in order for the enforcement provisions of the Act to be available to compel compliance and punish non-compliance, a request must be made in writing. O.C.G.A. § 50-18-71(b)(3).



If the library has an Open Records Officer, the library can require that all requests be made in writing to this designated officer. O.C.G.A. § 50-18-71(b)(2).

### **Is the library required to designate an Open Records Officer?**

The library may, but is not required to, designate an employee to act as the Open Records Officer. O.C.G.A. § 50-18-71(b)(1)(A). If the library elects to designate an Open Records Officer, the designation must be in writing, the legal organ in the county of the library's principal office must be notified, and the library must prominently display the designation on its website. O.C.G.A. § 50-18-71(b)(2).

If the library has an Open Records Officer, the three-day time period to respond to requests does not begin to run until a written request is made to this individual. O.C.G.A. § 50-18-71(b)(2). However, the unavailability of the Open Records Officer is not permitted to delay the agency's response. O.C.G.A. § 50-18-71(b)(1)(B).

Fig. 2

MODEL RESPONSE TO OPEN RECORDS REQUEST (THREE-DAY LETTER)

Date (To be sent within three business days of the request for record)

Dear \_\_\_\_\_ (Requester):

I received your [verbal/written] open records law request on \_\_\_\_\_ (date) to review \_\_\_\_\_ public library documents. After reviewing your request, it has been determined that:

\_\_\_ All of the documents that you requested are required to be released under the open records law.

\_\_\_ [Portions of the/The] documents that you requested are not required to be released because they fall into an exception provided by law, \_\_\_\_\_ (include applicable legal authority for such exemption with code section, subsection and paragraph).

\_\_\_ The documents that you requested do not exist.

The [portion of the documents subject to release/documents] are available at this time. Please come to the [circulation desk/reference desk/office of the director] of the \_\_\_\_\_ Public Library [during normal business hours/on \_\_\_\_\_ date/Please call \_\_\_\_\_ at \_\_\_\_\_ to set up a convenient appointment].

If you still desire access to these documents, please sign and date the bottom portion of this letter and return it to my office.

As provided by O.C.G.A. § 50-18-71, the estimated cost to search, retrieve, copy, redact, and supervise access to the requested documents is \$\_\_\_\_\_. This fee includes a charge of \$\_\_\_\_\_ per hour to cover the administrative costs of assisting you with your request (e.g., staff time searching for, retrieving, copying the requested documents, supervision of the access, etc.) to access library records as authorized by O.C.G.A. § 50-18-71. This fee represents the hourly rate of the lowest paid full-time employee with the necessary skill and training to respond to your request. There is no charge for the first fifteen minutes. Should you need copies of any of the requested records, the charge is 10¢ per page for letter or legal sized documents. You will be charged the actual cost for non-standard documents or electronic media. Additionally, higher fees may be charged for certified copies or other specialized records, if provided by law. At this time, there appear to be approximately \_\_\_\_\_ pages of documents responsive to your request that are subject to release under the open records law.

Please sign and date below acknowledging that you understand the administrative and copying costs are your responsibility. Please return a copy of this letter to my office prior to reviewing the documents.

Sincerely,

\_\_\_\_\_  
Public Library [Records Custodian/Director]

I agree to pay all copying and/or administrative costs incurred in fulfilling my open records request.

\_\_\_\_\_  
Requester

\_\_\_\_\_  
Date

### **May the library charge for producing requested documents?**

If the projected cost to produce the requested documents exceeds \$25, the library must provide an estimate of any copying/administrative charges for responding to the request. O.C.G.A. § 50-18-71(d). The library must notify the requestor of the estimated charge prior to fulfilling the request.

The library may collect a uniform copying fee of up to 10 cents per page for letter- or legal-sized copies. O.C.G.A. § 50-18-71(c)(2). For the production of electronic records, the library may charge the actual cost of the media on which the records are produced.

Reasonable charges for search, retrieval, and other direct administrative costs may be collected. O.C.G.A. § 50-18-71(c)(1). However, the hourly charge shall not exceed the salary of the lowest-paid full-time employee with the requisite skill and knowledge to perform the request, and there may be no charge for the first 15 minutes of work.

### **May the library require prepayment of the estimated cost for search, retrieval, redaction, and copying of records?**

If the estimate of costs to produce requested records exceeds \$500, the library may require prepayment before beginning the search, retrieval, redaction, and copying of records. § 50-18-71(d). Also, if a requester has failed to pay legally incurred costs in the past, the library may require prepayment for all future requests until the prior costs are paid or the dispute regarding the prior payment is resolved.

### **What recourse is available to the library when a requester does not pay the cost of search, retrieval and copying of records?**

The library is authorized to collect these costs in the same manner in which it collects overdue fines or lost book fees. O.C.G.A. § 50-18-71(c)(3). Additionally, the library may require a requester with an outstanding bill for costs to prepay for future requests. § 50-18-71(d).

### **What are the consequences for non-compliance with the Open Records Act?**

The Attorney General is authorized to file a criminal action against individuals who violate the open records law. O.C.G.A. § 50-18-73(a). Anyone who knowingly and willfully violates the open records law, either by refusing access or failing to provide documents within the requisite time, may be found guilty of a misdemeanor and may be subject to a fine not to exceed \$1,000. O.C.G.A. § 50-18-74. Alternatively, a civil penalty may be imposed by the court in any civil action against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. O.C.G.A. § 50-18-74. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12-month period from the date the first penalty or fine was imposed. O.C.G.A. § 50-18-74.

As with the open meetings law, the Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the library to release records, and the library may be obligated to pay the complaining party's attorney's fees if the records custodian acted without substantial justification in denying an open records request. O.C.G.A. § 50-18-73(b).

## How does the statute providing for confidentiality of patron records affect the libraries responsibilities under the Open Records Act?

The Open Records Act provides access to public records. The confidentiality statute pertaining to library records (O.C.G.A. § 24-9-46) states, “Circulation and similar records of a library which identify the user of library materials **shall not be public records** but shall be confidential and may not be disclosed . . . .” Therefore, library records that reveal the name of the library user and the materials he or she has utilized are specifically exempted from the open records law.

## PART II

Considering application of the public access laws to factual scenarios is a valuable method of understanding what the laws require. The examples below are drawn from actual questions raised by librarians in Georgia and incidents that have occurred elsewhere that have attracted media attention.

### **Practical Application of Georgia's Open Meetings Laws**

#### **Meeting by teleconference**

With today's advances in technology, library board members may request to participate in meetings via teleconference. However, the recent amendments to the Open Meetings Act place limits on when this option is available. Therefore, before an election is made to conduct a meeting by teleconference or for even a single member to participate by teleconference, the specific requirements of the Act should be consulted.

The 2012 revisions to the Open Meetings Act make clear that board members must attend meetings in person unless there are extenuating circumstances. O.C.G.A. § 50-14-1(g). The law provides that in the event of emergency conditions involving public safety or the preservation of property or public services, the board may meet by means of teleconference so long as the notice provisions of the Act are met and means are afforded for the public to have simultaneous access to the teleconference meeting.

The statute does allow an individual member's participation by teleconference when a quorum is present in person, if the member's physical absence is due to reasons of health or absence from the jurisdiction. O.C.G.A. § 50-14-1(g). If a member participates by teleconference pursuant to this subsection more than twice in one calendar year, that member must procure a written opinion of a physician or other health professional that reasons of health prevent the member's physical presence.

### **Executive session derives from a properly noticed open meeting**

The exceptions to the Open Meetings Act, particularly for discussion of litigation and to deliberate on personnel matters, are well known to board members and frequently utilized. O.C.G.A. §§ 50-14-2 and 50-14-3. It is important to understand, however, that a closed meeting, known as an executive session, must arise from a properly noticed open meeting. Even if the board intends to meet to discuss only a pending lawsuit with its attorney, the meeting must begin as an open meeting with proper notice. A vote to convene an executive session must take place during the open portion of the meeting.

### **Informal gatherings**

Events where board members are present that are social, ceremonial, or civic in nature are not "meetings" for purposes of the Open Meetings Act. O.C.G.A. § 50-14-1(a)(3)(B). Additionally, gatherings of board members for training or to inspect physical facilities or property are not "meetings" under the law. However, board members should take care that no official business, policy, or public matter is

considered during these informal gatherings. Presumably because agencies have abused these exclusions to evade the requirements of the Open Meetings Act, the General Assembly specifically stated that the “exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid requirements for conducting a meeting while conducting official business.” O.C.G.A. § 50-14-1(a)(3)(B).

### **Public comment at an open meeting**

Often, citizens wish to speak or make presentations during library board meetings. Georgia’ Open Meetings Act does not require the board to allow public participation in the meeting. The law requires that the public be given access to the meeting and be allowed to make sound or visual recordings. O.C.G.A. § 50-14-1(c). Whether a library board will allow public comment and what time limitations apply should be addressed in the library’s bylaws.



## Practical Application of Georgia's Open Records Law

### Email addresses of trustees

A recent records request received by a Georgia public library was for the email addresses of the trustees. Georgia's public records law does not require that a record that is not in existence be created in order to be produced. Therefore, unless a compilation of email addresses, i.e., an internal directory, is already in existence, there is no obligation to create it and provide it to the requester. O.C.G.A. § 50-18-71(j). Moreover, personal email addresses are subject to redaction. O.C.G.A. § 50-18-72(a)(20)(A).

Therefore, if there is an internal directory that contains official email addresses for the trustees, it should be provided to the requester. However, if there is a directory containing personal email addresses, those should be redacted before turning over the document. And if there is no directory, the requester should be informed that there are no records that are responsive to his/her request.

### Vague records requests

A Georgia library director recently was contacted and asked to whom within the library system records requests for electronic records should be made. The request went on to indicate that the requester was specifically interested in all inter-staff e-mail that has been sent in the last six months.

Vague or compound requests like this one may be challenging to address. The recipient should carefully review the request to ascertain what is being sought. This example is quite simple—the requester simply needs the name of the person

who is responsible for electronic records requests. The Open Records Act provides, “A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency . . . .” O.C.G.A. § 51-18-71(B)(1)(b).

The response to this inquiry is nothing more than the name of an individual.

The request received by the director indicates, however, that much a more complicated request is to come. No action should be taken until the request is actually made. It is possible that the requester will be more specific when lodging his or her official records request.

If the request that is ultimately received is as broad as “all inter-staff emails within the last six months,” the library should estimate the search, retrieval, redaction, and copy costs for such an undertaking. O.C.G.A. § 51-18-71(c)(1) and (2). If the estimate exceeds \$500, the library may insist on prepayment. O.C.G.A. § 50-18-71(d).

Another option for addressing a vague or overly broad request is to seek clarification from the requester. In many instances, the requester may not appreciate the volume of records that may be responsive to his or her request.

## **Documents generated by other agencies**

Public libraries may be a place that the county "posts" its budget for public review. If so, the question may arise as to whether the library is limited to a copy charge of 10 cents per page as required by the 2012 Open Records Act, or whether the library may charge its standard copy rate (which is likely higher than 10 cents per page) for making copies of the county's budget. This issue has not been addressed by the Attorney General's office or a Georgia court. There are valid arguments to be made on both sides of the issue. However, two factors weigh in favor of following the 10-cent requirement. First, the statute identifying public records includes "all documents . . . received by an agency . . ." O.C.G.A. § 50-18-70(b)(2). Second, the law itself includes language to indicate that the General Assembly intended it to be broadly construed to allow the access to governmental records. O.C.G.A. § 50-18-70(a). Accordingly, the safest practice would be to err on the side of caution and utilize the copy rate dictated by the 2012 Open Records Act.

## **APPENDIX A: Georgia's 2012 Open Meetings Laws**

**Title 50. State Government**

**Chapter 14. Open and Public Meetings**

**§ 50-14-1. Meetings of departments, agencies, boards, etc., to be open to public; notice of meetings and agenda**

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

(1) “Agency” means:

(A) Every state department, agency, board, bureau, office, 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, office, 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 body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such

organization; provided, however, that 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 subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) “Executive session” means a portion of a meeting lawfully closed to the public.

(3)(A) “Meeting” means :

(i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

(ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body, at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.

(B) Meeting shall not include:

(i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;

(ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of

the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;

(iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;

(iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or

(v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum.

This subparagraph's exclusions from the definition of the term meeting shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

(b)(1) Except as otherwise provided by law, all meetings shall be open to the public.

All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which 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 shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, 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 and sound recording during open meetings shall be permitted.

(d)(1) Every agency subject to this chapter 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 at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. 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.



(2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given 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 such 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, sufficient 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, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.

(3) 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 the 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. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

(e)(1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee 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.

(2)(A) 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.

(B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in

this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. 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.

(C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

(f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.

(g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct

meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

## **Title 50. State Government**

### **Chapter 14. Open and Public Meetings**

#### **§ 50-14-2. Attorney-client privilege and confidential tax matters not affected**

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 which are otherwise made confidential by state law.

## **Title 50. State Government**

### **Chapter 14. Open and Public Meetings**

#### **§ 50-14-3. Exceptions**

(a) 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 such 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 or prosecutorial agency in the state, including grand jury meetings;

(4) Adoptions and proceedings related thereto;

(5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public.

Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;

(6) Meetings:

(A) Of any medical staff committee of a public hospital;

(B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter 7 of Title 31, or under any other applicable federal or state statute or regulation; and

(C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;

(7) Incidental conversation unrelated to the business of the agency; or

(8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.

(b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:

(1) Meetings when any agency is discussing or voting to:

(A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;

- (B) Authorize negotiations to purchase, dispose of, or lease property;
- (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
- (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
- (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

(2) 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 or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. 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;

(3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and

(4) Portions of meetings during which that portion of a record made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

## **Title 50. State Government**

### **Chapter 14. Open and Public Meetings**

#### **§ 50-14-4. Procedure for closure of meetings**

(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)(1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending 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.

(2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

## **Title 50. State Government**

### **Chapter 14. Open and Public Meetings**

#### **§ 50-14-6. Violations relating to open meetings**

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 \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.

## **APPENDIX B: Georgia's 2012 Open Records Laws**

## **Title 50. State Government**

### **Chapter 18. State Printing and Documents**

#### **§ 50-18-70. Legislative findings and declaration; definitions**

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

(b) As used in this article, the term:

(1) Agency shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.

(2) "Public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

(c) Except as provided in subsection (b) of Code Section 15-6-61, any computerized index of a county real estate deed records shall be printed or made available through electronic means 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 or made available through electronic means and shall reflect the time and date that said index was corrected.

## **Title 50. State Government**

### **Chapter 18. State Printing and Documents**

#### **§ 50-18-71. Inspection and copies of public records; request procedures; fees and charges**

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.



(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

(2) Any agency that designates one or more open records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified

in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.

(3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.

(c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable 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.

(2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

(3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.

(d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested record or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this paragraph or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the

estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds \$500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

(e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.

(f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article.

Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse

to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.

(g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.

(h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall not refuse to provide the responsive data on the grounds that the data is available in whole or in its

constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

(i) Any computerized index of 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 such index was corrected.

(j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

## **Title 50. State Government**

### **Chapter 18. State Printing and Documents**

#### **§ 50-18-72. Exception of certain records**

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation 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 is reasonably likely to 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 such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution;

(5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party 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, that this subparagraph shall 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;

(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by the Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, the Council of

Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall provide data within the time limit established by the court for the limited purpose of such challenge. Neither the Council of Superior Court Clerks of Georgia nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data;

(7) Records consisting 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;

(8) 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;

(9) 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;

(10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records

takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

(11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency 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 of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. 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 such 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 without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of 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;

(12) 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 Budget and Research Office, provided that this exception shall not have any application 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;

(13) 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;

(14) 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;

(15) 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;

(16) Agricultural or food system records, data, or information that are considered by the 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;

(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the 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 herdmates 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;

(18) 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;

<Text of (a)(18) amended by Laws 2012, Act 684, eff. May 1, 2012.>

(18) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any 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 that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or

received by counties or municipalities in connection with neighborhood watch or public safety notification programs or 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;

(20)(A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph 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 the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom 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;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(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.

(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.

(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;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term "public employee" means any officer, employee, or former employee of:

- (A) The State of Georgia or its agencies, departments, or commissions;
- (B) Any county or municipality or its agencies, departments, or commissions;
- (C) Other political subdivisions of this state;
- (D) Teachers in public and charter schools and nonpublic schools; or
- (E) Early care and education programs administered through the Department of Early Care and Learning;

(22) Records of the Department of Early Care and Learning that contain the:

- (A) Names of children and day and month of each child's birth;
- (B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or
- (C) Names or other identifying information of individuals who report violations to the department;

(23) 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 10-12-2;

<<Text of (24) added by Laws 2012, Act 605, § 2, eff. April 17, 2012. See, also, version added by Act 603, § 4, eff. July 1, 2012.>>

(24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing

program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

<Text of (24) added by Laws 2012, Act 603, § 4, eff. July 1, 2012. See, also, version added by Act 605, § 2, eff. April 17, 2012>

(24) Records that are expressly exempt from public inspection pursuant to Code Section 47-20-87.

(25)(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 that 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 that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and

(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

(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.

(C) As used in division (i) 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;

(26) 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. Such 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;

(27) 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;

(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project;

(29) 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 \$10,000.00 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;

(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor 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;

(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;

(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records

confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

(35) 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;

(36) 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 paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

(38) Unless otherwise provided by law, 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 an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards

Commission, 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;

(39) Records disclosing 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 Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

(40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies as provided by law;

(41) Records containing communications subject to the attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney

conducting an investigation on behalf of an agency so long as such investigation does not pertain 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; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege.

Attorney-client communications, however, 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 such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain 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; and provided, further, that such

investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(43) Records containing tax matters or tax information that is confidential under state or federal law;

(44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the

Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business; or

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.

(b) 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.

(c)(1) 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.

(2) Except as provided in subsection (d) of this Code section, 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:

(A) A photograph;

(B) A photocopy;

(C) A facsimile; or

(D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such

physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both.

## **Title 50. State Government**

### **Chapter 18. State Printing and Documents**

#### **§ 50-18-73. Actions to enforce provisions**

(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. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.

(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 instituting 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 which 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 such decision.

## **Title 50. State Government**

### **Chapter 18. State Printing and Documents**

#### **§ 50-18-74. Penalties**

(a) Any person or entity 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, by knowingly and willingly failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such 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.

## **APPENDIX C: Summary of 2012 Changes to Georgia’s Open Meetings and Records Laws**

## Open Meetings

Georgia's new Open Meetings law:

--simplifies the definition of "meeting" to mean any gathering of a quorum of an agency's governing body at which "any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon." O.C.G.A. § 50-14-1(a)(3)(A).

--includes in the definition of meeting the gathering of a quorum of a **committee** where official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon. O.C.G.A. § 50-14-1 (a)(3)(A)(ii).

--clarifies that all votes must be taken in public. O.C.G.A, § 50-14-1(b). The only exceptions are for votes to authorize settlement of matters in litigation and for preliminary votes on real estate transactions. O.C.G.A. §50-14-3(b)(l).

--requires that meeting minutes identify those who second motions and those voting for or against proposals and motions except when the vote is unanimous.

O.C.G.A, § 50-14-1(e)(2)(B).

--requires that minutes be kept of executive sessions, though these are not public. These minutes will be used to resolve disputes should a matter go to court regarding the legality of an executive session. O.C.G.A. § 50-14-1(e)(2)(C).

--allows meetings of agencies without state-wide jurisdiction to take place in whole or part (depending on the circumstances) by teleconference when there are emergency conditions or health concerns involving a member. The public must have simultaneous access to the teleconference meeting. O.C.G.A. § 50-14-1(g).

--limits meeting by teleconference for non-state-wide agencies to emergency situations or to accommodate specific health or absentee issues with an individual member. O.C.G.A. 50-14-1(g).

--exempts email communications between members of an agency's governing board from the definition of "meeting." O.C.G.A. § 50-14-3(a)(8). These communications are, however, open records. O.C.G.A. § 50-18-71(g).

--expands the real estate exception to cover the sale, lease, and appraisal of real property. O.C.G.A. § 50-14-3(b)(1).

--expands the personnel exception to allow closed session interviews for the heads of agencies. The exception, however, **does not** allow closed discussions regarding an agency's employment or hiring practices. O.C.G.A. § 50-14-3(b)(2).

--allows discussion in executive session of portions of records not subject to public review under the Open Records Act if there are no other reasonable means to protect the privacy of the information involved. O.C.G.A. § 50-14-3(b)(4).

--provides a clearer rule for handling closed meetings when discussions delve into an area that should be open. O.C.G.A. § 50-14-4(b)(2).

--increases the penalty to \$1,000 for first open meetings violation and to \$2,500 for subsequent violations within a 12-month period. O.C.G.A. § 50-14-6.

--allows imposition of penalties in civil actions for negligent violation of the law. O.C.G.A. § 50-14-6.

## Open Records

The new Georgia law regarding open records:

-- includes “data” and “data fields” within the definition of “public record.” O.C.G.A. § 50-18-70(b)(2).

--clarifies the electronic records and data that are subject to the Open Records Act and the obligations of the agency to provide such material. O.C.G.A. § 50-18-71(f).

--reiterates that agencies must produce the documents they can within a reasonable period not to exceed three business days, and when the agency cannot produce all of the requested documents within three business days, the agency must inform the requester within the three-day period when the documents will be produced.

O.C.G.A. § 50-18-71(b)(1)(A).

--continues to permit both oral and written requests, but allows agencies to designate an open records officer to whom written requests must be made.

Adequate public notice must be given when an open records officer is designated.

O.C.G.A. § 50-18-71(b)(1)(B).



--gives requesters the option of making requests to the head of the agency or the senior official at a satellite office of the agency, to a clerk so designated as the agency's records custodian, or to an agency designated open records officer.

O.C.G.A. § 50-18-71(b)(1)(B)

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--requires a requester to make a written request to the agency before seeking to enforce the Act in court. O.C.G.A. § 50-18-71(b)(3).

--clarifies the fees agencies may impose; cost per page is now capped at 10 cents for letter- and legal-sized pages. O.C.G.A. § 50-18-71(c)(2).

--no longer requires agencies to notify requesters of charges less than \$25. In situations where the estimated costs are between \$25 and \$500, an agency must estimate the costs for the requester but may not insist on prepayment before allowing a requester to review records. If estimated costs exceed \$500, an agency may insist on prepayment before beginning search and production. If a requester has failed to pay the charges for a prior request, an agency may insist on prepayment for future requests until the payment is made or the issue is resolved.

O.C.G.A. § 50-18-71(d).

--clarifies the information a requester must provide when seeking email. O.C.G.A. § 50-18-71(e).

--provides for production of records through websites and clarifies how this relates to the production of electronic data. O.C.G.A. § 50-18-71(h).

--clarifies the exception related to records arising from the search for an agency head. O.C.G.A. § 50-18-72(a)(11).

--clarifies the exceptions related to the protection of personal information of citizens and public employees. O.C.G.A. § 50-18-72(a)(20),(21).

--clarifies the scope of the attorney-client privilege exception. O.C.G.A. § 50-18-72(a)(41).