

7TH EDITION

Georgia's Open Meetings and Open Records Laws

A GUIDE FOR COUNTY OFFICIALS



ACCG

Advancing Georgia's Counties.

Copyright 2016, ACCG. ACCG serves as the consensus building, training, and legislative organization for all 159 county governments in Georgia. For more information, visit: accg.org.

DISCLAIMER: This publication contains general information for the use of the members of ACCG and the public. This information is not and should not be considered legal advice. Readers should consult with legal counsel before taking action based on the information contained in this handbook.

Table of Contents

INTRODUCTION 7

OPEN MEETINGS LAW 8

GENERAL REQUIREMENTS 8

 Agencies Subject to the Open Meetings Law 8

 Meetings Subject to the Open Meetings Law 9

GATHERINGS NOT SUBJECT TO THE OPEN MEETINGS LAW 11

 Inspection of Physical Facilities 11

 Statewide, Multijurisdictional, or Regional Meetings 11

 Meetings with State or Federal Officials 11

 Carpooling 11

 Social, Civil, Ceremonial, or Religious Events 11

MEETINGS EXCLUDED FROM THE OPEN MEETINGS LAW 12

 Staff Meetings for Investigative Purposes 12

 Meetings of Law Enforcement Agencies 12

 Meetings of a Public Hospital Regarding Staff Privileges/Abortions/Strategies 12

 Incidental Conversation Unrelated to the Business of the County 12

 E-Mail Communications 12

PUBLIC ACCESS, NOTICE, AND RECORDING OF MEETINGS 14

 Holding Open Meetings via Teleconference 15

 Commissioners Participating in Open Meetings via Teleconference 16

 Notice of a Regularly Scheduled Meeting 18

 Notice of a Special Called Meeting 19

 Notice of an Emergency Meeting 20

 Meeting Agendas 21

 Voting in an Open Meeting 22

 Preparing a Summary of an Open Meeting 23

 Preparing Minutes of an Open Meeting 23

EXECUTIVE SESSIONS 25

 Meetings That May Be Closed 26

 To Discuss Litigation with the County Attorney 26

 To Discuss Confidential Tax Matters 27

Table of Contents *continued*

To Authorize Settlements to Lawsuits and Claims Involving the County	27
To Discuss Real Estate Decisions by the County	28
To Discuss Personnel Issues	29
Meetings of the Board of Trustees or Investment Committee of Public Retirement Systems.....	31
Meetings to Discuss Records That Are Exempt.....	31
How to Close a Meeting and Properly Hold an Executive Session	32
Responsibilities of the Presiding Officer in an Executive Session	33
Executive Session Affidavit	34
Preparing Minutes of an Executive Session	34
ENFORCEMENT OF THE OPEN MEETINGS LAW.....	36
Actions to Enforce the Open Meetings Law.....	36
When an Action Must Be Filed.....	37
Effect of Illegal Meeting on Decisions.....	37
Court Costs and Attorneys' Fees.....	38
Criminal Penalty for Open Meetings Law Violation.....	39
Civil Penalty for Open Meetings Law Violation.....	39
Defense Against Lawsuit for Releasing Information in Open Meeting.....	40
OPEN RECORDS LAW.....	41
GENERAL REQUIREMENTS	41
Right to Personally Inspect, Copy, or Photograph Open Records.....	41
Process of Complying with Open Records Law	41
Agencies Subject to the Open Records Law	44
Public Records That Must Be Released.....	44
County Records Retention Requirements.....	48
Open Records Officer/Custodian	49
Duty to Use Economical Means of Providing Copies	50
Electronic Access to Records	51
Access to E-Mail, Texts, and Other Electronic Messages.....	52
Time Limit for Responding to a Request and Producing Available Records.....	53
Responding to Requests for Open Records That Are Exempt.....	55
When Only a Portion of a Record Falls Within an Exemption	56
Requests for Records by Parties to a Civil Lawsuit.....	57

Table of Contents *continued*

Fees and Charges for Fulfilling Records Requests	58
Fees for Copies of Public Records	58
Administrative Charges for Search, Retrieval, and Other Costs of Complying with a Request	58
Fees When Records Are Requested by Other Public Agencies.....	60
Fees for Trial Exhibits	61
Fees for Records on Electronic Media.....	62
Fees for Geographic Information Systems (GIS) Records.....	62
Providing a Fee Before Searching for/Copying Records.....	63
Collecting Unpaid Copying and Administrative Charges	64
Records That Do Not Exist	65
RECORDS EXEMPTED FROM THE OPEN RECORDS LAW	66
Exempt Records: Disclosure Prohibited	66
Records Prohibited by Court Order.....	66
Records Where Confidentiality Is Required by the Federal Government.....	67
Medical Records and Invasion of Privacy	67
Personal Information in Public Records	69
Personal Information About Public Employees and Officials	72
Electronic Signatures	74
Records of Children Participating in Public Recreation Programs	74
Portions of Records Containing Trade Secrets	74
Portions of Records Containing Proprietary Information	76
Records Containing Confidential Tax Matters.....	76
Computer Programs and Software	77
Original Trial Exhibits	78
Vital Records	79
Cable and Video Service Provider Financial Information.....	80
Records of Confidential Employee Evaluations.....	81
Exempt Records: Disclosure Discretionary	81
Records Where Public Access Is Not Required by Law	81
Records Identifying Confidential Sources or Investigative Materials	81
Accident Reports	82
Records Disclosing the Location of Certain Historic Properties.....	84
Records Disclosing the Location of Rare Plants and Animals.....	85
Burglar Alarm, Fire Alarm, and Security System Information	85

Table of Contents *continued*

Neighborhood Watch and Public Safety Notification Programs	85
Records Containing Information About Rideshare Participants.....	86
Records That Could Compromise Public Security.....	86
Written Records and Recordings of 9-1-1 Calls	88
Audio and Video Recordings	89
Applications for Licenses to Possess Firearms	89
Records Subject to the Attorney-Client Privilege	89
Attorney Work Product Records	91
Records Related to County Liability and Self-Insurance	91
Exempt Records: Public Access May Be Withheld Temporarily	92
Records of Pending Investigation of Law Enforcement, Prosecution, or Regulatory Agencies	92
Records of Personnel Investigations	93
Records About Future or Potential County Purchase of Real Estate	93
Pending Bids and Proposals.....	94
Records Identifying Applicants for County Manager/Administrator and Other Executive Agency Heads	95
Records With Historical Research Value	97
MISCELLANEOUS EXEMPTIONS	98
The General Assembly	98
Records Containing Farm Water Use.....	98
Research by Institutions of Higher Education	98
Public Education Testing Materials/Athletic Associations	98
State Health Departments and Higher Education Research Participants.....	99
Office of Legislative Counsel	99
ENFORCEMENT OF THE OPEN RECORDS LAW	99
Filing an Action to Enforce the Open Records Law.....	99
Criminal Prosecution of Open Records Law Violations.....	100
Criminal Penalty for Open Records Law Violations.....	101
Civil Penalty for Open Records Law Violations.....	102
Defense Against Lawsuit for Releasing Information Under the Open Records Law ...	103
Court Costs and Attorneys' Fees	103

Table of Contents *continued*

RESOURCES 105

OPEN MEETINGS MODEL FORMS 105

 Model Executive Session Affidavits 106

 Model Executive Session Minutes 110

 Model Resolution Approving Executive Session Minutes 113

OPEN RECORDS MODEL FORMS 114

 Model Open Records Officer Resolution 115

 Model Open Records Law Policy 116

 Model Open Records Request 123

 Model Responses to Open Records Act Requests 125

 When Documents Are Available Within Three Business Days 125

 When Records Are Not Available Within Three Days 129

 When an Error Is Discovered in the Designation of an Exemption 134

 Model Log of Open Records Request 138

 Model Request from News Media Representative for Social Security and
Day and Month of Birth 139

 Model Statement of Need Required to Obtain Accident Reports 140

OPEN MEETINGS COURT DECISIONS AND ATTORNEY GENERAL OPINIONS 141

OPEN RECORDS COURT DECISIONS AND ATTORNEY GENERAL OPINIONS 152

OPEN MEETINGS AND OPEN RECORDS STATUTORY REFERENCES 167

SUMMARY OF OPEN MEETINGS LAW EXEMPTIONS 170

SUMMARY OF OPEN RECORDS LAW EXEMPTIONS 173

Introduction

Trust in the actions of elected officials is critical to the continued success of our representative form of government. A key factor in fostering this trust is the ease of access to meetings and records of local governments and other public agencies. Georgia's open meetings and open records laws support this concept, making it clear that the citizens of Georgia have a right to observe the process by which local officials make decisions affecting their pocketbooks and daily lives.

The open records law imposes serious obligations on public agencies to provide access to, or copies of, almost all records. While there are exemptions that county officials should be aware of regarding both meetings and records, Georgia courts have made it very clear that both laws will be construed in favor of citizens seeking access and against any public agencies that would deny access.

With the critical importance of openness in mind, the ACCG has prepared this guide to assist public officials in complying with these requirements. The guide is presented primarily in a frequently asked questions (FAQs) format and reflects statutory changes through the 2016 session of the Georgia General Assembly. In addition, readers will find a series of model forms and policies to assist in administering and complying with the law, attorney general opinion and case law summaries, and concise summaries of exemptions to the open meetings and open records laws.

Keep in mind that the model forms and policies provided are suggested forms and policies. As with any template, it is critical that the county attorney be directly involved in the adoption and use of any of these models.

In conclusion, the open meetings and open records laws contain numerous hazards and potential pitfalls for public servants. This guide focuses on helping county officials navigate those hazards and on answering most, if not all, questions that may arise.

PLEASE NOTE

Throughout this guide, the term “county” has been substituted for “agency” for convenience and to more clearly inform county commissioners and staff on how this law should be specifically applied to county government. However, as written in law, the term “agency” applies to every state department, agency, board, bureau, office, commission, public corporation, and authority as well as boards, committees, and departments within local governments.

Also for convenience, the term “board of commissioners” is used throughout to reflect the county governing authority regardless of whether the county governing authority for a specific county is a board of commissioners, a sole commissioner, or the governing body of a consolidated government.

Open Meetings Law

GENERAL REQUIREMENTS

The governing bodies of state agencies and local governments (i.e., boards of commissioners, city councils, or school boards), organizations that carry out a governmental function on behalf of state or local governing authorities, committees created by a board of commissioners, and private nonprofit entities and organizations that receive at least 1/3 of their operating expenses from state, county, or city sources are all subject to the open meetings law.

AGENCIES SUBJECT TO THE OPEN MEETINGS LAW

The open meetings law applies to

- every state department, agency, board, bureau, office, commission, public corporation, and authority;
- every county, city, school district, or other political subdivision of this state;
- every department, agency, board, bureau, office, commission, authority, or similar body of each such county, city, or other political subdivision of the state;
- every city, county, regional, or other authority established pursuant to the laws of this state; and
- any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency which constitutes more than 33 1/3 percent of the funds from all sources of such organization.

Nonprofit organizations as defined above **do not** include all non-profits; the open meetings law **does not** apply to nonprofit organizations that are

- 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; or
- a sub-agency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.¹

EXAMPLES OF LOCAL AGENCIES SUBJECT TO THE OPEN MEETINGS LAW

In addition to the board of commissioners, local agencies include other local organizations such as the planning commission, the board of zoning appeals, the personnel review board, the merit board, the board of tax assessors, the board of equalization, the board of health, the housing authority, the hospital authority, the development authority, the recreation commission, the regional commission, the airport authority, and the water and sewer authority. It also includes any committees created by those agencies.

¹ Official Code of Georgia (O.C.G.A.) § 50-14-1(a)(1).

MEETINGS SUBJECT TO THE OPEN MEETINGS LAW

Meetings that must comply with the open meetings law include

- the gathering of a quorum of a board of commissioners or other local agency at which any official business, policy, or public matter of the county is formulated, presented, discussed, or voted upon; or
- the gathering of a quorum of any committee of a board of commissioners or local agency or a quorum of any committee created by a board of commissioners, at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.²

A meeting occurs when a quorum of a board of commissioners, other local agency, or a committee gathers to discuss county business or any other public matter pertaining to the county, to take official action (i.e. vote), or to discuss or formulate recommendations on county business or policy.³

The meeting may be a regularly scheduled commission meeting (i.e., meetings held in accordance with a schedule adopted by the board, as contained in local legislation or as established by ordinance), a special called meeting (i.e., meetings to address issues that arise in between regularly scheduled meetings), or an emergency meeting (i.e., meetings necessitated by special circumstances where less than 24 hours' notice is provided). A meeting may also be an agenda-setting meeting, a work session, or a committee meeting.

Agenda-setting meetings and work sessions held prior to the official business meeting are subject to the requirements of the open meetings law because county business and other public matters are typically discussed. Agenda setting meetings and work sessions attended by a quorum of the board of commissioners must be open to the public and are subject to the same requirements as regular meetings, even though no final action or vote is taken.

Any committee created by the board of commissioners or other local agency at which any official business, policy, or a public matter of the committee is being discussed, presented, formulated, or voted upon is subject to the open meetings law, regardless of the composition of that committee (i.e., county commissioners, staff, citizens, etc.).⁴ For example, if the board of commissioners creates a standing committee (such as a budget committee), that committee's activities would be subject. Similarly, if the board of commissioners creates an ad hoc committee of citizens to review the feasibility of installing a dog park, or a committee of commissioners to evaluate proposals or bids submitted for a county project, these committees also would be subject.

² O.C.G.A. § 50-14-1(a)(3)(A).

³ Id.

⁴ O.C.G.A. § 50-14-1(a)(3)(A)(ii).

FAQ

How is a committee created by the governing body?

Generally, commissioners cannot act individually; therefore, a committee created by the governing body is one that has been established by an ordinance, resolution, or other official action of the board of commissioners.

Do commissioners have to be appointed to a committee in order for it to be deemed a committee subject to the open meetings requirements?

No. Committees created by the board of commissioners can consist entirely of commissioners, no commissioners, or a mix of commissioners and others.

Are constitutional officers, such as the sheriff, tax commissioner, clerk of superior court, and probate judge, subject to the requirements of the open meetings law?

The open meetings law applies to the governing body of every department or office of the county. Given that constitutional officers are the governing body of their county department or office, they are subject to the same requirements as the board of commissioners. However, the open meetings law does not apply to judges, nor does it apply to meetings of any law enforcement agency, including the sheriff.

Is it considered a meeting if three commissioners of a five-member board inadvertently arrive at the county administration building at the same time?

If a quorum of a board of commissioners arrives at the administration building at the same time, it is not a meeting subject to the open meetings law. However, an open meetings law violation, or a perceived open meetings law violation, could easily occur if any county business or other public matters are discussed by or in the presence of the three commissioners and proper notice and public access is not given.

If three out of five commissioners meet at a local restaurant without giving any notice to discuss county business, is there an open meetings violation if no final action is taken?

Yes. Since county business was discussed with a quorum of the board of commissioners present, the meeting was subject to the open meetings law, despite the fact that no final or official action was taken and it did not occur in a county facility.

If three out of five commissioners meet at a local restaurant without giving any notice to discuss presidential politics, is there an open meetings violation?

No. As long as the commissioners did not discuss county business, it is not an open meetings violation. While presidential politics is certainly a public matter, it is reasonable to assume that the term “public matters of an agency”⁵ pertains to duties or functions of the county, not to a presidential campaign.

May one commissioner speak personally with another commissioner about county business without violating the law?

As long as two commissioners do not constitute a quorum, it would not be considered a meeting subject to the open meetings law.

FAQ

Are e-mail communications subject to the open meetings law?

E-mail communications among members of a county do not constitute an open meeting, even if a quorum of the board of commissioners is included in the communication. Note, however, that such e-mails are subject to disclosure under the open records law.⁶

Is a presentation by a consultant to the board of commissioners subject to the requirements of the open meetings law?

Yes.

Must meetings of the planning and zoning board be open to the public?

Yes, all local commissions, authorities, boards, bureaus, committees, and similar bodies created by or for the county are subject to the open meetings law.

GATHERINGS NOT SUBJECT TO THE OPEN MEETINGS LAW

The open meetings law recognizes circumstances where a quorum of a board of commissioners may convene in one location without the gathering being subject to open meeting requirements. As long as the primary purpose is not to evade or avoid the requirements of the open meetings law, the following gatherings of a quorum of a board of commissioners **are not considered meetings**:⁷

- **Inspection of Physical Facilities**

Inspection of physical facilities or property under the board’s jurisdiction, as long as no other official business of the county is to be discussed or official action is to be taken by the quorum⁸

- **Statewide, Multijurisdictional, or Regional Meetings**

Participation at statewide, multijurisdictional, or regional meetings in seminars or courses of training or to receive or discuss information on matters related to the purpose of the county, as long as no official action is to be taken by the quorum⁹

- **Meetings with State or Federal Officials**

Meeting with officials of the legislative or executive branches of state or federal governments at state or federal offices and at which no official action is to be taken by the quorum¹⁰

- **Carpooling**

Traveling to a meeting or gathering as long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum¹¹

- **Social, Civil, Ceremonial, or Religious Events**

Gathering at social, ceremonial, civic, or religious events, as long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum¹²

6 O.C.G.A. § 50-14-3(a)(8).
 7 O.C.G.A. § 50-14-1(a)(3)(B).
 8 O.C.G.A. § 50-14-1(a)(3)(B)(i).
 9 O.C.G.A. § 50-14-1(a)(3)(B)(ii).
 10 O.C.G.A. § 50-14-1(a)(3)(B)(iii).
 11 O.C.G.A. § 50-14-1(a)(3)(B)(iv).
 12 O.C.G.A. § 50-14-1(a)(3)(B)(v).

MEETINGS EXCLUDED FROM THE OPEN MEETINGS LAW

Certain types of meetings are simply excluded from the open meetings law, including the following:

- **Staff Meetings for Investigative Purposes**

Staff meetings held for investigative purposes under duties or responsibilities imposed by law¹³

- **Meetings of Law Enforcement Agencies**

Deliberations and voting of the State Board of Pardons and Paroles, as well as meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings¹⁴

- **Meetings of a Public Hospital Regarding Staff Privileges/Abortions/Strategies**

Meetings of any medical staff committee of a hospital, as well as meetings of the governing authority of a public hospital or any committee thereof when performing peer review or a medical review function or when discussing the granting, restriction, or revocation of staff privileges, or the granting of abortions under state or federal law¹⁵

- **Incidental Conversation Unrelated to the Business of the County**

Conversation that is incidental in nature unrelated to county business¹⁶

- **E-Mail Communications**

E-mail communication among members of a board of commissioners; however, e-mails are subject to disclosure under the open records law unless the content is subject to an exemption¹⁷

FAQ

If a quorum of a board of commissioners gathers to inspect a new county bridge or some other county facility, is that gathering considered a meeting subject to the open meetings law?

No. This is not an open meeting, as long as no other official business is discussed or action is taken.

If a quorum of a board of commissioners meets with officials of other counties or cities, is this a meeting subject to the requirements of the open meetings law?

As long as no final action is taken, the meeting is not required to be open to the public. For example, attendance at a statewide conference or an ACCG district meeting would not be subject to the requirements of the open meetings law, even if a quorum was present.

May a quorum of a board of commissioners attend ACCG training without violating the open meetings law?

Yes. A quorum of a board may attend training without violating the open meeting law, as long as they do not discuss county business with one another at the training.

13 O.C.G.A. § 50-14-3(a)(1).

14 O.C.G.A. § 50-14-3(a)(2).

15 O.C.G.A. §§ 50-14-3(a)(6); 31-7-15(d).

16 O.C.G.A. § 50-14-3(a)(7).

17 O.C.G.A. §§ 50-14-3(a)(8); 50-18-72(a).

FAQ

Can a quorum of a board of commissioners informally discuss the road resurfacing list for their county while at lunch during an ACCG training session?

No. Discussion of county business by a quorum of a board at an ACCG training session would be considered a violation of the open meetings law.

Is a retreat held for the board of commissioners to discuss county business subject to the requirements of the open meetings law if held outside of their county?

The commissioners cannot avoid the requirements of the open meetings law by meeting in another county, whether it is designated as a retreat or otherwise. Retreats to discuss and formulate county policies, the budget, or other county matters, to improve teamwork, or to develop future strategies must be properly advertised and open to the public, even if held in another county and no decisions are made or votes taken.

Can a quorum of a board of commissioners privately discuss county business using electronic media, such as instant messaging or online communities?

While the open meetings law expressly exempts e-mails from creating a meeting, that exemption does not apply to other forms of electronic communication. The Georgia Court of Appeals has indicated that a board may be found in violation of the open meetings law by participating in a “virtual meeting” if public business is discussed by a quorum of the board via telephone, internet, or written poll and the notice and other requirements of the open meetings law are not observed (see Resources, Open Meetings Court Decisions and Attorney General Opinions, *Claxton Enterprises v. Evans County Board of Commissioners*, p. 144).

Is a meeting considered subject to the open meetings law if a quorum of a board of commissioners meets with a Georgia Department of Transportation (GDOT) official at GDOT's offices to discuss a road project?

As long as no official action is taken and the meeting takes place at a state office, meeting with state government officials would not constitute a meeting subject to the open meetings law.

Is a meeting considered subject to the open meetings law if a quorum of a board of commissioners meets with a GDOT official at the courthouse to discuss a road project?

Yes. If the meeting does not take place in a state office, it would be considered a meeting subject to the open meetings law.

If a quorum of a board of commissioners meets with a congressional aide in the congressman's district office about federal assistance for their county, is that gathering considered a meeting subject to the open meetings law?

As long as no official action is taken, meetings with officials of the federal government at a federal office would not constitute a meeting subject to the open meetings law.

If a quorum of a board of commissioners attends a funeral, baseball game, dinner, church service, ribbon-cutting ceremony, or other ceremony, is that gathering considered a meeting subject to the open meetings law?

These are examples of social, ceremonial, civic, and religious events. As long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon at such gatherings, they would not constitute a meeting subject to the open meetings law.

FAQ

May a quorum of a board of commissioners discuss the Georgia Bulldogs without violating the open meetings law?

Yes. Incidental conversation that is not related to county business may be discussed by a quorum of a board of commissioners without violating the open meetings law. However, commissioners should be mindful of public perception whenever a quorum is gathered. Even if a violation of the open meetings law is not occurring, the public or media may assume that the commissioners are discussing county business.

May commissioners gain consensus on agenda items through e-mail without violating the open meetings law?

Use of e-mail in and of itself is not considered a meeting subject to the open meetings law. However, e-mail messages that relate to county business must be released whenever requested under the open records law whether they are on a county computer, home computer, personal cell phone, etc.

PUBLIC ACCESS, NOTICE, AND RECORDING OF MEETINGS

The public must be allowed access to all meetings, except for those that are subject to an exemption or exception specified in the open meetings law. Visual and sound recording during open meetings must be permitted.¹⁸

FAQ

Rather than allow the public to attend a meeting, may a county just provide the public with a video or audio recording of the meeting?

No. The public must be allowed access to the meeting.

May a county prohibit video recording of a meeting?

No. The public is entitled to make visual and sound recordings of all open meetings.

May a limit be placed on the use of recording devices?

There is no specific authority for counties to limit the use of recording devices. However, it is reasonable to assume that certain limitations could be imposed, such as prohibiting light bars for videos or other equipment that interferes with the meeting.

FAQ

May a limit be placed on the number of recording devices or media outlets?

No. There is no provision in the law giving commissioners the ability to limit the number of recording devices allowed in an open meeting. Likewise, a county cannot allow some individuals or media to record a meeting, but exclude others.

If a board of commissioners gives the impression that a meeting is closed, can they be found in violation of the open meetings law, even if they do not formally vote to close the meeting?

Yes. A board was found to be in violation of the open meetings law because it “adjourned” the public hearing portion of a meeting, excused the public from the meeting, and continued the meeting with the door closed. Although the board continued to meet on public business, they gave the impression to the public that the meeting had ended by “adjourning” the public hearing portion of the meeting.¹⁹ While members of the public may not be entitled to make comments after the public hearing portion of the meeting is concluded, they do have the right to attend an entire meeting.

What happens if the number of people showing up for a meeting exceeds the capacity of the regular meeting room?

If another larger room is available, the meeting should be moved to accommodate the larger crowd. Signs should be placed at the regular meeting room directing latecomers to the new meeting location.

HOLDING OPEN MEETINGS VIA TELECONFERENCE

Agencies with statewide jurisdiction or a committee of such an agency may meet by teleconference, provided that all other requirements of the open meetings law are met.²⁰

Meetings of a board of commissioners (and other agencies without statewide jurisdiction) may be held by teleconference under limited circumstances. If there is an emergency involving public safety or if public property or public services are at risk, the board can meet by teleconference to address the emergency conditions, as long as proper notice and simultaneous public access is provided.²¹

When an emergency arises involving public safety or the preservation of property or public services, counties (and other agencies without statewide jurisdiction) may meet by teleconference, as long as they meet the regular notice required by the open meetings law and the public can have simultaneous access to the teleconference meeting.

¹⁹ Beck v. Crip County Zoning Board of Appeals, 221 Ga. App. 801(1996).

²⁰ O.C.G.A. § 50-14-1(f).

²¹ O.C.G.A. § 50-14-1(g).

FAQ

May a board of commissioners “meet” by teleconference to conduct public business?

Meetings of a board of commissioners may be held by teleconference under limited circumstances. If there is an emergency involving public safety or if public property or public services are at risk, commissioners can meet by teleconference to address the emergency conditions, as long as notice and simultaneous public access is provided.

How is simultaneous access to a teleconference provided to the public?

The law does not dictate how simultaneous access of a teleconference meeting is provided to the public. It may be as simple as having the clerk place the meeting on speakerphone at the regular meeting place. Some counties may be able to conduct the meeting utilizing the internet and broadcasting it on the government access channel, the county website, or on a screen in the commissioners' meeting room. In some instances, the public could be allowed to call in to a toll free number to listen to the meeting.

During the holiday or vacation season, it is sometimes difficult to get a quorum available for a meeting. May the clerk schedule a teleconference for a commission meeting?

No. Unless there is an emergency involving public safety or the preservation of property or public services, a quorum of a board of commissioners may not participate in a meeting by teleconference.

COMMISSIONERS PARTICIPATING IN OPEN MEETINGS VIA TELECONFERENCE

As long as a quorum of a board of commissioners is physically present at the meeting and other requirements of the open meetings law are met, a commissioner may participate by teleconference because of health reasons or absence from the county. However, unless there is an emergency or a written note from a doctor (or other health professional) indicating that the commissioner cannot attend the meeting due to health reasons, no commissioner may participate by teleconference more than twice in one calendar year.²² Lastly, counties and other local agencies may also hold meetings via telephone to accommodate one or more of their members on active military duty.²³

²² Id.

²³ O.C.G.A. § 38-2-279(g).

FAQ

If a commissioner is ill and unable to physically attend a meeting, may he or she participate remotely?

Yes. Up to twice per calendar year, a commissioner may participate remotely in commission meetings for health reasons or because of absence from the county, as long as a quorum of the board is physically present at the meeting. If a commissioner has participated remotely in meetings twice in a year and his or her health prevents physical attendance at other meetings, he or she may still participate remotely if a note is provided from his or her doctor or other health care provider.

If a commissioner will be out of town for a commission meeting, may he or she participate remotely?

Yes. Up to twice per calendar year, a commissioner may participate remotely in commission meetings because of absences from the county or for health reasons, as long as a quorum of the board is physically present at the meeting.

May an absent commissioner participate in a meeting of the board of commissioners via Skype, GoToMeeting, or similar video conferencing forums?

Yes. While the law does not define “teleconference,” as long as the conference method that the county chooses to use (telephone, video, etc.) allows the public to have simultaneous access and all the other requirements of O.C.G.A. § 50-14-1(g) are met, it should be permissible. In order for a commissioner to participate by teleconference, a quorum of commissioners must be physically present at the meeting and the reason for the commissioner’s absence must be due to military service, health, or physical presence outside of the county.

May a commissioner participate in a meeting by teleconference if he or she is called to active military duty?

Yes. O.C.G.A. § 38-2-279(g) specifically allows commissioners on active military duty to participate in commission meetings via teleconference. In addition, the law makes it clear that official business can occur at a meeting where one or more commissioners on active duty are participating in the meeting via teleconference.

If three commissioners on a five-member board are ill, may they participate in the meeting by teleconference?

A meeting cannot be held, even with a physician’s note, unless there is a quorum of the board physically present at the meeting site. If three out of five commissioners are present, the other two commissioners may participate by teleconference, as long as all the requirements of O.C.G.A. § 50-14-1(g) have been met.

NOTICE OF A REGULARLY SCHEDULED MEETING

The board of commissioners and any other local agency or committee subject to the open meetings law must prescribe the time, place, and dates of regular meetings. The schedule of regular meetings must be available to the general public. Notice with the time, place, and date must be posted at least one week in advance and kept in a conspicuous place available to the public at the regular location of the meeting, as well as on the county's (or other local agency or committee's) website, if it has one. While meetings are generally held in accordance with a regular schedule, a regularly scheduled meeting may be cancelled or postponed as appropriate.²⁴

TYPES OF MEETINGS

The type of meeting notice that must be given to the public depends on the type of meeting. For purposes of notice, there are three types of meetings: (1) regularly scheduled meetings, (2) special called meetings, and (3) emergency meetings. Each type of meeting requires varying notice and posting requirements, which are described in this section.

FAQ***What happens if notice of a meeting is not properly given?***

If a meeting notice is not properly given and the meeting is held, it will be in violation of the open meetings law. Any action taken at the meeting may be voided if challenged.²⁵ It may also be prosecuted as a misdemeanor offense or may be applied as civil penalties against the violating officials.²⁶

Must the notice be posted in a locked notice board?

No. The law does not require that notices be posted in a locked notice board. However, posting notices in a secured display prevents unauthorized removal or alteration of the notice and minimizes the possibility of a claim that the public was not properly notified of the meeting.

May the times and dates of regularly scheduled meetings be changed?

Generally, county commissioners may hold additional meetings, cancel or postpone meetings, or change the location of a regularly scheduled meeting. However, many counties specify the times and dates of certain meetings by ordinance—particularly regular monthly or bi-monthly meetings. If, for example, the county code requires the board of commissioners to meet the first Monday of every month, then these meetings cannot be changed unless the ordinance allows changes or the ordinance is amended. Even when local legislation specifies regular meetings, the law allows counties to hold additional meetings as needed.

If the county has a website but it is not regularly updated or maintained, is it an open meetings law violation if notice is not posted to the website?

The law requires notice to be posted on the county website, if a website exists. This means that every effort should be made to update and post the meeting notice on the website. If a website is not being maintained, it may be best to eliminate the website rather than provide erroneous information.

²⁴ O.C.G.A. § 50-14-1(d)(1).

²⁵ O.C.G.A. § 50-14-1(b).

²⁶ O.C.G.A. § 50-14-6.

FAQ

What type of notice is required for a work session?

Just as with a regular commission meeting, proper notice must be given and an agenda posted. A list of the commissioners who attended the work session and a summary of the subjects acted upon, if any, must be available for public inspection within two business days of the work session. Additionally, minutes must be prepared and released by the next regular meeting. The minutes of a work session must include the names of the commissioners who attended the meeting, a description of any motion or proposal made, and a record of any votes taken.²⁷

NOTICE OF A SPECIAL CALLED MEETING

For special called meetings, written or oral notice must be given at least 24 hours in advance of the meeting to the county legal organ or, at the option of the commissioners, to a newspaper having a general circulation in the county at least equal to the county legal organ. In counties where the legal organ is published less than four times weekly, written notice must be posted for at least 24 hours at the regular meeting place. Also, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice must be given to that requesting media outlet at least 24 hours before the called meeting by telephone, fax, or e-mail. 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 fax, e-mail, or mail through a self-addressed, stamped envelope provided by the requestor.²⁸

FAQ

How does a county meet the 24-hour notice requirement when the legal organ publishes only one edition per week?

Giving written notice 24 hours before the meeting to any local media outlet (i.e., print, radio, and television) that operates business or physical facilities within the county by telephone, fax, or e-mail is sufficient, regardless of the day that the newspaper is published. There should also be a written notice posted at the regular meeting site. While the law does not require notices for meetings other than regularly scheduled meetings to be posted on the county website, it may be good practice to post other meeting notices there as well, if possible.

27 O.C.G.A. §§ 50-14-1(e)(2)(A) and (B).

28 O.C.G.A. § 50-14-1(d)(2).

NOTICE OF AN EMERGENCY MEETING

When a board of commissioners, local agency, or committee declares that special circumstances exist, a meeting may be held with less than 24 hours' notice, as long as notice of the meeting and subjects expected to be considered are provided 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 the legal organ. The reason for holding the meeting within 24 hours and the nature of the notice must be recorded in the minutes. The required notice includes notice by telephone, fax, or e-mail to any local broadcast or print media outlet whose place of business and physical facilities are located in the county and that has provided a written request within the previous calendar year.

FAQ

Is holding a meeting with less than 24 hours' notice ever authorized?

Yes. When special circumstances such as emergencies occur, the county may hold a meeting with less than 24 hours' notice. The county must provide notice to the county legal organ (or to a newspaper with equal circulation in the county) that includes an agenda of subjects to be discussed or acted upon. If a local newspaper or news station makes a written request within the last calendar year, the county must also give notice by telephone, fax, or e-mail. The newspaper must make information immediately available to the public upon request. The nature of the provided notice and the reason for the emergency meeting must be recorded in the minutes of the meeting.

In the event that a natural or manmade emergency or disaster occurs, are there other procedures that govern meetings of the board of commissioners?

If it is imprudent, inexpedient, or impossible to hold commission meetings at the regular meeting place due to emergency or disaster resulting from manmade or natural causes (as declared by the Governor or other authorized state official), commissioners may meet anywhere within or outside of the county or the state.²⁹ Such a meeting may be called by the presiding officer (i.e., the chair) or by any two commissioners. At the meeting, the commissioners must establish and designate emergency temporary meeting locations where public business will be transacted during the emergency. Any action taken in such meetings shall have the same effect as if performed at the regular meeting site. To the extent made necessary by the emergency, the commissioners are not required to comply "with time-consuming procedures and formalities prescribed by law."³⁰

Additionally, a board may hold a meeting by teleconference when there is an emergency involving public safety or the preservation of property or public services. Notice of the teleconference must be provided just as for any other meeting. The public must be provided simultaneous access to the teleconference. (See Holding Open Meetings via Teleconference, p. 15.)

²⁹ O.C.G.A. § 38-3-54.

³⁰ Id.

MEETING AGENDAS

Before any meeting, a board of commissioners, local agency, or committee must make available an agenda of all matters expected to come before them at such meeting. The agenda must be available upon request and must be posted at the meeting site, as far in advance of the meeting as reasonably possible, but no more than two weeks before the meeting. In other words, the agenda must be posted at some time during the two-week period immediately prior to the meeting. Failure to include an item on the agenda that needs to be addressed during the course of the meeting does not prevent a board of commissioners, local agency, or committee from considering or acting upon that item.³¹

FAQ

Must an agenda be prepared for each meeting?

Yes.

Do planning commissions and other local agencies have to prepare and post an agenda?

Yes.

Do committees created by the board of commissioners or other local agencies have to prepare and post an agenda?

Yes. Committees are also subject to all the requirements of the open meetings law and must prepare and post an agenda.

Is an agenda required for work sessions of a board of commissioners?

Yes. A work session of the board of commissioners is deemed a meeting, as long as a quorum of the board is present.

What needs to be included in the agenda?

The agenda must include every matter that is expected to be presented, discussed, or acted upon at the meeting.

What if a county routinely holds an agenda-setting meeting prior to the regularly scheduled meeting?

An agenda-setting meeting must comply with all of the requirements of the open meetings law. As such, the notice and agenda must be posted.

When and where must an agenda be posted?

The agenda must be posted at the meeting site as early as possible, but at least at some point during the two weeks before the meeting. Although the law does not require it, posting the agenda on the county website, if there is one, will maximize public access.

What if an issue that needs to be addressed arises after the agenda is posted?

An issue not on the posted agenda may be considered or voted on in the meeting if necessary. While the term “necessary” is not defined, any topic that the board deems necessary may be added to the agenda. However, counties should not use this provision as an excuse to add controversial topics at the last minute in hopes of avoiding scrutiny.

VOTING IN AN OPEN MEETING

While counties may have differing local requirements on voting procedures (such as whether the chair can vote, quorum requirements, etc.), the open meetings law provides uniform requirements on how votes should be made and recorded. Any resolution, rule, regulation, ordinance, or other official action of a county adopted, taken, or made at a meeting that is not open to the public is not binding.³²

The name of each person voting for or against a proposal must be recorded. It is presumed that each person in attendance approved the action taken, unless the minutes reflect the name of the person(s) voting against the proposal or abstaining.³³

No vote in executive session to acquire, dispose of, or lease real estate or to settle litigation, claims, or administrative proceedings is binding on the county until a subsequent vote is taken in an open meeting where the identity of the property and the terms of acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote.³⁴

FAQ

What is required for a vote by a board to be binding?

First, the vote must be in an open meeting. Any vote taken in executive session or in violation of the law will not be binding. The vote must be recorded in the minutes and identify the person making the motion and person seconding, as well as the name of each person voting. Decisions made in an executive session must be voted on and approved in an open meeting to be binding.

If a commissioner is silent during the vote, how is his or her vote counted?

Unless a commissioner indicates that he or she is abstaining or voting against the motion, it will be assumed that he or she has voted in favor of the motion.

How does the county approve the settlement of a lawsuit?

While the commissioners may discuss and vote to gain consensus on a lawsuit settlement with their attorney in executive session, in order for the vote on the settlement to be binding, the commissioners must vote on the settlement in an open meeting. The names of the parties to the lawsuit and the principal settlement terms must be disclosed before the vote.

What happens if the commissioners do not vote on the settlement of a lawsuit in an open meeting?

The settlement agreement is not binding. Presumably, the lawsuit would continue.

32 O.C.G.A. § 50-14-1(b)(2).

33 O.C.G.A. § 50-14-1(e)(2)(B).

34 O.C.G.A. § 50-14-3(b)(1).

FAQ

If the commissioners approve the purchase, sale, or lease of real property in an executive session, how does the purchase, sale, or lease agreement become effective?

The commissioners may discuss and vote to gain consensus on the terms of a proposed purchase, sale, or lease of property in executive session. However, for that vote to be binding they must have a subsequent vote on the purchase, sale, or lease in an open meeting. The identity of the property and the terms of the purchase, sale, or lease must be disclosed before the vote.

What happens if the commissioners do not approve the purchase of property in an open meeting?

If the commissioners do not approve the purchase of property in an open meeting, the county would not be able to purchase the property.

PREPARING A SUMMARY OF AN OPEN MEETING

A summary of the subjects acted on and those members present at a meeting of the board of commissioners, a local agency, or committee must be written and made available to the public for inspection within two business days of the adjournment of a meeting.³⁵

FAQ

Is a meeting summary required for work sessions or agenda-setting sessions?

Yes. Work sessions and agenda-setting sessions must meet all the requirements of the open meetings law, including a summary of an open meeting.

PREPARING MINUTES OF AN OPEN MEETING

The regular minutes of a meeting must be promptly recorded. The minutes must be open to public inspection once approved as official by the board of commissioners, local agency, or committee, but in no case later than immediately following its next regular meeting. However, the county may allow the earlier release of minutes, even if they have not been approved by the board of commissioners, local agency, or committee. The minutes must 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 must be recorded. It is presumed each person in attendance approved the action taken unless the minutes reflect the name of the person(s) voting against the proposal or abstaining.³⁶

Additionally, for a special called meeting with less than 24 hours' notice, the minutes must include the nature of the provided notice and the reason for the emergency meeting.³⁷ If part of the meeting is an executive session, minutes must be taken for the closed portion and kept confidential. The public minutes must state that the session was closed and the reason for closing.

FAQ

Do maps, contracts, and other documents approved in a meeting have to be included in the minutes?

Yes. Contracts, maps, or other documents approved in a meeting must be included in the minutes or incorporated by reference.³⁸ If incorporated by reference, the board must adopt either a resolution or an ordinance establishing a location where such documents are to be stored (i.e., “an alternative central location”).³⁹

When must minutes of an open meeting be made available to the public?

The minutes of an open meeting must be made available to the public for inspection once they are approved by the county or immediately following the next regular meeting—whichever comes first. It must be no later than immediately following the next meeting. However, nothing in the law prohibits the release of a draft prior to its adoption by the board of commissioners.

When must minutes of an open meeting be approved?

Minutes must be approved at the next regular meeting.

How should the minutes reflect voting at a meeting?

The minutes must identify persons making and seconding each motion or proposal and the name of each person voting for or against each motion or proposal. If a commissioner needs to abstain from a vote because of a conflict of interest, it should also be included in the minutes.

Where should minutes be kept?

The official minutes of commission meetings must be kept in the board of commissioners' office.⁴⁰ Care should be taken to store executive session minutes in a secured location in the commissioners' office that is separate from the open meeting minutes.

Must minutes be taken for gatherings that are not subject to the open meetings law?

No. Minutes do not need to be kept for gatherings that do not qualify as meetings subject to the open meetings law.

36 O.C.G.A. § 50-14-1(e)(2)(B).

37 O.C.G.A. § 50-14-1(d)(3).

38 O.C.G.A. § 36-10-1.

39 O.C.G.A. § 36-1-25.

40 Id.

FAQ

Must minutes be kept during an executive session when discussing matters properly excluded under the open meetings law?

Yes. Minutes must be taken during executive sessions. The executive session minutes are not public and should be kept confidential for in camera (i.e., in a judge's chambers) inspection only. (See Preparing Minutes of an Executive Session, p. 34.)

How should closing a portion of the open meeting be reflected in the minutes?

The minutes must include the reason for closure (e.g., to discuss exempt personnel matters, to discuss land acquisition, to discuss a lawsuit, etc.), the names of the members present, and the names of the members voting for closure.⁴¹

Must minutes be prepared from a transcript or tape recording of the meeting?

No. There is no requirement that executive sessions be taped or that a verbatim transcript be made for use in preparing the minutes. Minutes can be detailed verbatim transcriptions or simple summaries of actions taken as allowed by the open meetings law. The preferred method should be fully discussed with the county attorney and county clerk to ensure the best method for a given county.

EXECUTIVE SESSIONS

An executive session is a portion of a meeting lawfully closed to the public.⁴² As a rule, meetings of a county or other public agency must be open to the public. Georgia law, however, permits boards of commissioners and other public agencies to go into executive session to consider certain matters that may be discussed outside the presence of the public. For example, land acquisition, settlement of a pending lawsuit, appointment of a county administrator, etc., may be discussed in a properly convened executive session.⁴³

FAQ

May a board of commissioners discuss other matters unrelated to county business in an executive session?

No. The topics that can be discussed in an executive session are limited and are specifically stated in law.

41 O.C.G.A. § 50-14-4(a).

42 O.C.G.A. § 50-14-1(a)(2).

43 O.C.G.A. § 50-14-3(b).

MEETINGS THAT MAY BE CLOSED

Meetings may not be closed except as expressly authorized by law. Under current law, counties and other public agencies can go into executive sessions only in the following circumstances:

- To discuss litigation with the county attorney
- To discuss confidential tax matters
- To authorize settlements to lawsuits and claims involving the county
- To discuss real estate decisions by the county
- To discuss personnel issues
- Meetings of the board of trustees or investment committee of public retirement systems
- Meetings to discuss records that are exempt

To Discuss Litigation with the County Attorney

The open meetings law does not repeal in any way the attorney-client privilege. A meeting otherwise required to be open to the public 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 county or any officer or employee or in which the county or any officer or employee may be directly involved. However, a meeting may not be closed for advice or consultation with the county attorney on whether to close a meeting.⁴⁴

FAQ

May a board of commissioners use the attorney-client privilege to justify an executive session by simply asking the county attorney for advice on any topic?

No. While the open meetings law expressly preserves the attorney-client privilege that protects communications between attorneys and their clients, it is limited to the discussion of pending or potential lawsuits, claims, administrative proceedings, or judicial actions. For example, the board could not close the meeting to ask their attorney advice on the purchase of equipment or investing public funds.

May a board of commissioners go into executive session to ask their attorney whether an issue may be discussed in executive session?

No. Any discussion and advice on whether or not closing a meeting is legal must be in an open meeting before the decision to close the meeting is made.

May a board of commissioners discuss a lawsuit in an executive session if their attorney does not attend the meeting?

No. The exemption allowing commissioners to discuss lawsuits is limited to meetings in which the commissioners receive legal advice from an attorney. The county's attorney must be included in the executive session in order to privately discuss a lawsuit.

FAQ

What is the procedure for closing a meeting to obtain advice from a county attorney on a particular topic?

Assuming the county attorney is being requested to give advice that falls within the attorney-client privilege, the board must go through the normal procedures for closing a meeting. (See *How to Close a Meeting and Properly Hold an Executive Session*, p. 32.)

May a meeting be closed under the potential litigation exception to discuss a terminated employee who threatens to use all legal means necessary to get his/her job back?

No. The Georgia Court of Appeals has held that, in order to be considered potential litigation, there must be “a realistic and tangible threat of legal action against it or its officer or employees, a threat that goes beyond a mere fear or suspicion of being sued.”⁴⁵ In order to meet this test, the county should look for three factors: (1) a formal demand letter or something else in writing that presents a claim against the county and indicates a sincere intent to sue; (2) previous or pre-existing litigation between the county and the other party or proof of ongoing litigation of similar claims; or (3) proof that the other party has hired an attorney and expressed an intent to sue (see *Resources, Open Meetings Court Decisions and Attorney General Opinions, Claxton Enterprises v. Evans County Board of Commissioners*, p. 144).⁴⁶

To Discuss Confidential Tax Matters

The open meetings law does not repeal in any way those tax matters that are otherwise made confidential by state law.⁴⁷ Income tax records in the possession of the county board of tax assessors and information submitted to counties for determining taxes owed,⁴⁸ such as certain occupational tax records,⁴⁹ are examples of confidential tax matters.

To Authorize Settlements to Lawsuits and Claims Involving the County

Commissioners may meet in executive session to discuss or vote to authorize settlement of pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions directly involving the county or any officer or employee of the county.

No vote by the commissioners in executive session to settle litigation, claims, or administrative proceedings is binding on the county until a subsequent vote is taken in an open meeting. The parties to the lawsuit or claim and principal settlement terms must be disclosed before the vote.⁵⁰

45 Claxton v. Evans County Bd. of Commissioners, 249 Ga. App. 870 (2001).

46 Id.

47 O.C.G.A. § 50-14-2(2).

48 O.C.G.A. § 48-5-314.

49 O.C.G.A. § 48-13-15.

50 O.C.G.A. § 50-14-3(b)(1).

FAQ

May the commissioners vote to give the county attorney the authority to settle a lawsuit in executive session?

Yes. The commissioners may vote to give the county attorney settlement authority in executive session. However, the settlement agreement is not binding until the board votes on it in a public meeting after disclosing the names of the parties and the main terms of the settlement agreement.

Does the county have to disclose the amount it has agreed to pay to settle a lawsuit?

Prior to the official vote in an open meeting, the parties to the lawsuit and the principle settlement terms must be disclosed.

To Discuss Real Estate Decisions by the County

Executive sessions may be held when the commissioners are discussing or voting to

- authorize negotiations to purchase, dispose of, or lease property;
- authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
- enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
- enter into an option to purchase, dispose of, or lease real estate subject to approval in a subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate is binding on the county 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.⁵¹

FAQ

May a board of commissioners close a meeting to discuss the sale or transfer of county property to a citizen, corporation, or another agency?

Yes. The open meetings law exemption includes the disposal of property, as well as purchasing or leasing.

Must minutes be prepared for an executive session discussing land acquisition?

Yes. Minutes are required for every executive session. The minutes of an executive session to discuss land acquisition must be prepared the same as for any other executive session meeting (i.e., the minutes must include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes).

May the board of commissioners vote in executive session to authorize the county manager to negotiate the purchase of land?

Yes. While the board can vote to authorize the negotiation or purchase of land, the deal will not be binding until it is voted on in an open meeting. Prior to the vote in open session, the location of the property and terms of the purchase must be disclosed.

Does the county have to disclose how much they agreed to pay for property before the purchase?

Yes. The board must disclose the location of the property and the terms of the purchase.

May a board of commissioners go into executive session to discuss the purchase of equipment, supplies, or services?

No. The open meetings exemption only applies to the purchase of land.

To Discuss Personnel Issues

Executive sessions may be held to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, periodic evaluation or rating of a public officer or employee, or to interview applicants for the position of the executive head of a county. However, the board cannot go into executive session to receive evidence or hear arguments on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee. Additionally, the board cannot go into executive session to consider or discuss policies regarding the employment or hiring practices of the county. The vote on any personnel matter must be taken in public. Meetings of the board of commissioners, a local agency, or committee to discuss or take action on the filling of a vacancy in the membership of the county itself must at all times be open to the public.⁵²

FAQ

May a board of commissioners close a meeting to discuss employees' concerns about a proposed amendment to the merit system?

No. Since this is not a discussion of compensation or disciplinary action for a particular employee or public officer it would not fall under the personnel exemption to the open meetings law.

May a board of commissioners close a meeting to discuss the budget of the recreation department merely because salary increases for certain members of the staff would be included in the discussion?

While the salaries for individual employees may be discussed in executive session, the remainder of the budget discussion, including the salaries budget category, would have to occur in an open meeting.

May an employee disciplinary hearing be conducted in executive session?

No. While the board may discuss and deliberate on a disciplinary matter in a closed meeting, arguments and evidence regarding disciplinary action proposed or taken against an employee must occur in an open meeting. In the same manner, any vote on employee discipline must be taken in public and recorded in the minutes.

May a supervisor attend an executive session to discuss the possible termination of one of his or her employees?

It depends. If the supervisor has a role in the decision-making process, then it may be permissible for the supervisor to attend the executive session. However, if the role of the supervisor is to inform the board of the actions of the employee in question, then that portion of the meeting should be open as the supervisor is providing facts or evidence.

Does the personnel review board have to conduct its hearings in a public meeting?

Yes. As a committee, the personnel review board is subject to the same requirements as the board of commissioners regarding open meetings. While the personnel review board can go into executive session to deliberate, the portion of the meeting where the department head presents the reasons for termination or disciplinary action and the employee presents his or her reasons for objecting to the action must be conducted in public.

May a board of commissioners interview a candidate for the position of county manager in a closed meeting?

Yes. According to the open meetings law, the commissioners may meet in closed session to discuss the hiring or appointment of employees and to interview applicants for the position of executive head of an agency. Bear in mind, however, that if the commissioners choose to conduct their interviewing and evaluation of an agency head in closed session, then they must release the names of the top three candidates and wait 14 days before making a hiring decision under the open records law.⁵³

May a board of commissioners close a meeting to discuss standard operating procedures for the fire department under the personnel exemption?

No. Discussion of policy issues must take place in meetings open to the public. The personnel exemption only applies to meetings regarding the performance or status of individual employees. The personnel exemption does not apply to budgetary or policy matters.

Is closing a meeting to talk about restructuring the planning commission legal?

No. This is a public policy issue and does not fall within the personnel exception.

FAQ

May a board of commissioners close a meeting to discuss the new hiring policy for the county?

No. Discussion of policy issues regarding employment or hiring practices of a county must take place in meetings open to the public.

Does the filling of a vacancy on a board of commissioners fall under the personnel exemption to the open meetings law?

No. The open meetings law requires that any discussion on filling a vacancy on the board be held in public.

Meetings of the Board of Trustees or Investment Committee of Public Retirement Systems

Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to state law may be closed when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition.⁵⁴

Meetings to Discuss Records That Are Exempt

Executive sessions are permitted when it is necessary to discuss confidential records (i.e., those records or portions of records exempt from the open records law.⁵⁵) if there is no other reasonable way for the county to discuss the record without disclosing the confidential part of the record.⁵⁶

FAQ

Under what circumstances may a board of commissioners close a meeting to view an exempt record?

The board of commissioners may discuss an exempt record in executive session if there are no reasonable means to meet and consider the record in an open meeting without disclosing exempt portions of the record. For example, if the board needs to review security plans for the county courthouse, it may be impossible to review and discuss the plans in public without revealing part of the information exempted by O.C.G.A. § 50-18-72(a)(25).

May the board go into executive session to review bids or proposals?

Possibly. For instance, if the request for proposal required vendors to include trade secrets and the proposals included the required affidavit (see Portions of Records Containing Trade Secrets, p. 74) and the commissioners needed to review the trade secret, then the board could go into executive session.⁵⁷ Presumably, commissioners could discuss detailed cost estimates on any bid or proposal, as such numbers are confidential until the bid has been awarded or all bids are rejected.⁵⁸ Of course, any vote on the award of the bid or proposal would have to be made in public.

54 O.C.G.A. § 50-14-3(b)(3).

55 O.C.G.A. § 50-18-70 *et seq.*

56 O.C.G.A. § 50-14-3(b)(4).

57 O.C.G.A. § 50-18-72(a)(34).

58 O.C.G.A. § 50-18-72(a)(10).

HOW TO CLOSE A MEETING AND PROPERLY HOLD AN EXECUTIVE SESSION

Before a board of commissioners can go into an executive session, the open meeting must be closed. To close a meeting, the specific reasons for closing the meeting must be stated and a majority vote of a quorum of the board of commissioners present for the meeting is needed. The minutes must reflect the reason for closure, the names of the members present, and the names of those voting for closure. The portion of the minutes containing the reason for closure, the members present, and the names of those voting for closure must be made available to the public as in any other minutes.⁵⁹

Once the open meeting has been properly closed, the executive session can begin. Only topics that are specifically authorized by law as being exempt from the open meeting law can be discussed. (See Meetings That May Be Closed, p. 26). At the conclusion of the executive session, the presiding officer must execute an affidavit identifying the reason for closing the meeting and swearing that the meeting was limited to the topics allowed by law. Minutes must also be taken for the closed section of the meeting and kept for in camera inspection.⁶⁰

FAQ

May the board vote to go into an executive session on a legally exempt matter in the middle of a public meeting if an executive session was not advertised or listed on the agenda?

Yes. As long as the public meeting was properly advertised and the board properly votes to close the meeting, an executive session can be held to discuss a legally exempt matter, even if was not included on the original agenda.

May the board go into an executive session to discuss an exempt topic and then discuss other non-exempt matters?

No. Only matters clearly exempted from coverage under the open meetings law may be discussed in executive session. Any discussion of other issues would be a violation of the open meetings law.

May the board vote on matters discussed in closed session?

It depends. The law specifies when a vote can be taken on an issue in closed session. However, votes that are permitted to be taken in a closed session are not binding until details and terms are disclosed and the vote is taken again in an open meeting.⁶¹

Who may be allowed to participate in an executive session?

In addition to members of the governing body, other persons necessary to the discussion may participate. Typically, this will include the county attorney, the county administrator or manager, the county clerk, and other key staff. According to an Attorney General opinion,⁶² the commissioners must determine, on a case-by-case basis, who should be permitted to attend executive sessions. For example, it would be reasonable to assume that in an executive session discussing land acquisition, a real estate agent, a surveyor, or an appraiser could attend along with county staff involved in the acquisition.

59 O.C.G.A. § 50-14-4(a).

60 O.C.G.A. § 50-14-4(b).

61 O.C.G.A. § 50-14-3(b)(1).

62 1998 Op. Att'y Gen. No. U98-3.

FAQ

May the board allow a member of the general public to attend an executive session and keep the meeting closed to the rest of the public?

No. If members of the general public are allowed to attend a closed meeting, then the meeting cannot be closed to the rest of the public.

Is a board of commissioners required to close a meeting to discuss an exempt topic?

No. Although the board is authorized to discuss exempt topics in an executive session, it is not required to do so.

May a quorum of a board of commissioners meet in an executive session with a citizen who requests a private meeting?

Unless the subject of the meeting meets one of the exemptions listed in O.C.G.A. §§ 50-14-2 and 50-14-3 or elsewhere, a quorum of a board cannot meet privately with a citizen.

Are there any other instances that a meeting can be closed other than those specified above?

No. The Georgia Supreme Court has held that unless a meeting clearly falls within one of the exceptions to the open meetings law, the meeting must be open to the public.⁶³

Responsibilities of the Presiding Officer in an Executive Session

In the event that someone in an executive session begins to discuss an issue not allowed in executive session pursuant to O.C.G.A. § 50-14-3, the chair or presiding officer must immediately rule the discussion out of order. Everyone present in the executive session must stop the questioned conversation. If that person continues or attempts to continue the discussion after being ruled out of order, the chair or presiding officer is obliged to immediately adjourn the executive session.⁶⁴

FAQ

What should the chair do if someone present in an executive session initiates discussion of a non-exempt topic?

The chair should rule the party out of order. If the discussion on the non-exempt topic persists, the chair has an affirmative obligation to adjourn the meeting immediately.

While waiting for the executive session to begin, what if a commissioner asks the county manager about the status of a road project or some other non-exempt matter?

If the public has been excluded, then the chair or presiding officer should rule the discussion out of order.

⁶³ Steele v. Honea, 1991 Ga. LEXIS 1043 (1991).

⁶⁴ O.C.G.A. § 50-14-4(b)(2).

Executive Session Affidavit

When a board of commissioners, local agency, or committee holds an executive session pursuant to O.C.G.A. § 50-14-4(a), the chair or presiding officer must execute and file with the official minutes a notarized affidavit, stating under oath that the subject of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

Additionally, the county may adopt a policy that requires each member of a board of commissioners, local agency, or committee to execute a notarized affidavit along with the chair or presiding officer.⁶⁵

FAQ

Who must sign the affidavit?

If the chair conducts the executive session, then the chair must execute the affidavit. If the vice-chair or other person presides over the executive session, then that individual must sign the affidavit. However, the law allows counties to adopt a policy that each member of the governing body present in the executive session is required to sign the affidavit.

Does the affidavit have to be notarized?

Yes.

What happens if other topics are discussed in the executive session and the chair signs the affidavit?

Because the statement is made under oath, if a chair knowingly and willfully makes a false statement in the affidavit, he or she may be convicted of false swearing.⁶⁶ False swearing is a felony punishable by one to five years in prison and/or a \$1,000 fine.

If the chair rules discussion of a non-exempt topic out of order and that ends the discussion, can he or she still sign the affidavit in good faith?

Presumably, since the discussion was cut off, the chair in good faith could still swear that the executive session was devoted to exempt topics. As an alternative, the affidavit may indicate that a non-authorized topic was introduced but ruled out of order or that the meeting was adjourned due to continued efforts to discuss non-exempt topics.

Preparing Minutes of an Executive Session

When a meeting or portion of a meeting is closed to the public to discuss any matter that is exempted by the open meetings law, the specific reasons for such closure must be entered into the official minutes of the meeting. Where a meeting is devoted in part to matters with the authorized exceptions, any portion of the meeting not subject to any such exception, privilege, or confidentiality must be open to the public. The minutes of such portions not subject to any authorized exception must be taken, recorded, and be open to public inspection as provided in O.C.G.A. § 50-14-1(e).⁶⁷

⁶⁵ O.C.G.A. § 50-14-4(b)(1).

⁶⁶ See O.C.G.A. § 16-10-71.

⁶⁷ O.C.G.A. § 50-14-4(a).

Minutes of executive sessions must also be recorded, but are not open to the public. The minutes must specify each issue discussed in executive session. In executive sessions where issues subject to the attorney-client privilege are discussed, the minutes must reflect that an attorney-client discussion occurred and its subject matter must be identified; however, the substance of the discussion need not be recorded and must not be identified in the minutes. Executive session minutes must be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.⁶⁸

FAQ

If a board of commissioners goes into executive session, what must be reflected in the minutes of the public meeting?

The minutes must include the specific reasons for closing the meeting, the names of the members present, and the names of the members voting to close the meeting. Additionally, the presiding officer's notarized affidavit stating that only legally exempt topics were discussed during the closed session must be filed with or included in the minutes.⁶⁹

What must be included in executive session minutes?

Minutes must be kept for all executive sessions. However, the law does not specify what must be included in the minutes. Presumably, minutes should be prepared just as for an open meeting, except that any portion of the minutes that discuss topics of attorney-client privilege should be identified as such, noted, and not recorded in detail. The minutes should also include each issue discussed in the executive session.

Are minutes required for executive session meetings discussing an exempt matter other than land acquisition?

Yes. Minutes must be kept for all executive sessions.

If a non-exempt topic is broached in an executive session, should that be noted in the minutes?

The law does not address this, but the purpose of preparing executive session minutes is to provide evidence as to what occurred in executive session in case of future court inspection. Noting how this situation was handled by the chair or presiding officer in the minutes, coupled with the sworn affidavit, may help to address future issues about what was discussed, or rather not discussed, at the executive session.

How should minutes of executive sessions be approved?

The law is silent on how minutes of executive sessions should be approved. Commissioners and county clerks should discuss with their county attorney how to properly review and approve the minutes. One suggestion is to have the minutes prepared during the executive session, have each commissioner review the minutes before the meeting has concluded, and then have the commissioners approve the minutes when they return to the public meeting. Other options include approving the minutes at the next executive session or at the next regular meeting.

68 O.C.G.A. § 50-14-1(e)(2)(C).

69 O.C.G.A. § 50-14-4(b)(1).

FAQ

Where should executive session minutes be stored?

Executive session minutes should be kept in a secure location within the board of commissioners' office, separate from the open meeting minutes.

If a challenge is made to the executive session, how can the county prove that it complied with the open meetings law without releasing executive session minutes?

The open meetings law provides that a judge may privately examine the minutes in order to substantiate that the commissioners discussed only legally permitted topics in executive session. This allows the county to prove compliance with the law without disclosing confidential minutes to the party who challenges the legality of an executive session.

Do minutes of an executive session have to be prepared from a verbatim transcript or tape?

No. As with regular meetings, there is no requirement that executive sessions be taped or that a verbatim transcript be made for use in preparing the minutes.

ENFORCEMENT OF THE OPEN MEETINGS LAW

The superior courts of this state have jurisdiction to enforce compliance with the open meetings law, including the power to grant injunctions or other equitable relief. In addition to an action that may be brought by a person, firm, corporation, or other entity, the Attorney General is authorized to bring enforcement actions, both civil and criminal, to enforce compliance with the open meetings law.⁷⁰

ACTIONS TO ENFORCE THE OPEN MEETINGS LAW

The Attorney General, the press, a citizen, a corporation, or any other private party may file a complaint or civil suit in superior court to invalidate any action taken in a meeting that did not meet the requirements of the open meetings law (e.g., a meeting that was improperly advertised; a meeting that was improperly closed; a meeting where an agenda, summary, or minutes were not prepared or released in a timely manner; a closed meeting on a non-exempt topic; etc.). However, in addition to seeking to invalidate actions taken in an illegal meeting, the Attorney General and the district attorney may file a criminal action in superior court for violations of the open meetings law.

FAQ

Who pays for the legal defense of the commissioners if they are sued or prosecuted for an open meetings law violation?

Either the individual commissioners will personally cover the cost of defense and the fine, or as authorized by O.C.G.A. § 45-9-21, the board of commissioners may cover the cost of defending civil and criminal lawsuits involving county officials or employees. Additionally, the defense of these cases may be covered by the county's insurance policies, if any.

WHEN AN ACTION MUST BE FILED

Except for zoning decisions, any action contesting a resolution, rule, regulation, ordinance, or other formal action of a county based on an alleged violation of the open meetings law must be commenced within 90 days of the date that the alleged violation occurred. However, if the meeting was held in a manner not permitted by law, the challenge can be filed within 90 days from the date the party alleging the violation knew or should have known about the alleged violation, as long as such date is not more than six months after the date that the alleged violation occurred.⁷¹

Any open meeting challenge to a zoning decision must be commenced within 30 days as allowed by law for appeal of such zoning decision.⁷²

FAQ

May a decision made at a meeting that was closed improperly be challenged any time after the meeting?

O.C.G.A. § 5-3-20 provides that an action challenging a zoning decision must be filed within 30 days of the meeting. For all other types of decisions, the action must be filed within 90 days of the meeting, or within 90 days of the alleging party knowing about the violation, as long as that is still within six months. If no challenge is raised within the 30-day period or 90-day period, the official action taken in the allegedly illegal meeting will stand. However, be aware that criminal penalties may be imposed for a violation at any time within two years of the violation.⁷³

When may criminal actions be brought against commissioners or others who participate in a meeting that was not properly advertised or an unauthorized executive session?

Criminal actions for open meetings violations may be brought at any time within two years of the violation.⁷⁴

When may civil penalties be brought against commissioners or others who participate in a meeting that was not properly advertised or an unauthorized executive session?

Any claim for a civil action must be brought within 90 days of the violation, or if the meeting was held illegally, within 90 days that the party alleging the violation knew or should have known about the violation, as long as that is within six months of the violation.

EFFECT OF ILLEGAL MEETING ON DECISIONS

Except as otherwise provided by law, all meetings must be open to the public. All votes at any meeting must be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of the open meetings law. Any resolution, rule, regulation, ordinance, or other official action of a county adopted, taken, or made at a meeting that is not open to the public as required by the open meetings law will not be binding.⁷⁵

71 O.C.G.A. § 50-14-1(b)(2); *Tisdale v. City of Cumming*, 326 Ga. App. 19 (2014).

72 O.C.G.A. § 50-14-1(b)(3).

73 O.C.G.A. § 17-3-1(e).

74 *Id.*

75 O.C.G.A. § 50-14-1(b)(2).

FAQ

What effect does improperly advertised or posted notice of a meeting have on county business conducted at that meeting?

If successfully challenged, any action taken or business conducted at a meeting held in violation of the open meetings law would be void.

What should a county do if there is uncertainty over whether all requirements of the open meetings law have been met?

If there is doubt about whether or not a meeting is in violation of the open meetings law and the county wants to ensure that any actions taken at that meeting are upheld, the actions should be ratified at a subsequent meeting that has clearly met all of the requirements.

COURT COSTS AND ATTORNEYS' FEES

In any action brought to enforce the open meetings law in which the court determines that the board or committee acted without substantial justification for exemption, the court must assess reasonable attorneys' fees and other litigation costs reasonably incurred in favor of the complaining party, unless it finds that special circumstances exist. Whether the position of the complaining party was substantially justified is determined on the basis of the record as a whole that is made in the proceeding for which fees and other expenses are sought.⁷⁶

FAQ

What can county officials do to avoid paying attorneys' fees to the plaintiff when a violation of the open meetings law has occurred?

If the county attorney determines that the requirements of the open meetings law have been met and the board conducts the meeting in reliance on that opinion, then the board has a good faith argument that it acted with substantial justification and should not be subject to the complaining party's attorneys' fees if the meeting is later determined to have been in violation. In such a matter, it is very important that the county attorney be given all of the relevant facts so that he or she may provide an informed opinion and that the county attorney's advice is followed.

Can a board of commissioners require the complaining party to pay the board's attorneys' fees if the county wins an open meetings challenge in superior court?

No. Parties to a lawsuit are generally only entitled to attorneys' fees when a statute specifically authorizes the imposition of attorneys' fees. Unlike the open records law, which does authorize the county to recover attorneys' fees, when a lawsuit is instituted without substantial justification, there is no authorization for the county to recover the taxpayers' funds expended on attorneys' fees in defending a frivolous open meetings lawsuit.

CRIMINAL PENALTY FOR OPEN MEETINGS LAW VIOLATION

Any person knowingly and willfully conducting or participating in a meeting in violation of the open meetings law may be found guilty of a misdemeanor and upon conviction will be subject to a fine up to \$1,000. A criminal fine up to \$2,500 per violation per person may be imposed for each additional violation committed within a 12-month period from the date that the first fine was imposed.⁷⁷

It is a defense to any criminal action under the open meetings law that a person has acted in good faith in his or her actions.⁷⁸

CIVIL PENALTY FOR OPEN MEETINGS LAW VIOLATION

A civil penalty may be imposed by the court in any civil action brought pursuant to the open meetings law against any person who negligently violates the terms of the law in an amount not to exceed \$1,000 for the first violation. A civil penalty up to \$2,500 per violation per person may be imposed for each additional violation committed within a 12-month period from the date that the first penalty was imposed.⁷⁹

The best way to avoid violations is to strictly adhere to the requirements of the open meetings law, limit executive sessions to matters that are clearly specified as exemptions to the law, and seek the advice of the county attorney if there is any doubt.

FAQ

What are the different penalties and possible results of violating the open meetings law?

In addition to invalidating any action taken at a meeting improperly conducted or improperly closed, officials participating in an illegal meeting may be found guilty of a misdemeanor punishable by a \$1,000 fine or civil penalty. More than one violation within one year may result in a \$2,500 criminal fine or civil penalty.

If an executive session affidavit contains false information, the presiding officer may be convicted of a felony punishable by one to five years in prison and/or a \$1,000 fine. Also, violations of the open meetings law may be grounds for recall.⁸⁰ Additionally, civil penalties may be sought against violators.

What can county commissioners do to avoid violations of the open meetings law?

If there is any question as to whether a meeting must be open to the public, whether a meeting was properly closed, or whether a meeting has been properly advertised, the commissioners should request an opinion from the county attorney. If the county attorney rules that the commissioners are in compliance with the open meetings law and the commissioners conduct the meeting in reliance on that opinion, it could be argued that any open meetings violation was unintentional. On the other hand, if the county attorney rules that the meeting should be open, was not properly closed, or has not been properly advertised, then failure to heed his or her advice could pose serious problems if the meeting is challenged by a citizen or the press. County officials should remember that Georgia courts have a history of liberally construing the open meetings law—which means that they will rule in favor of openness. The best way to avoid violations, therefore, is to strictly adhere to the requirements of the open meetings law, limit executive sessions to matters that are clearly specified as exemptions to the law, and seek the advice of the county attorney if there is any doubt.

77 O.C.G.A. § 50-14-6. "Person" as defined in this code section applies only to natural persons. See *Gravitt v. Olens*, 333 Ga. App. 484 (2015).

78 *Id.*

79 *Id.*

80 O.C.G.A. § 21-4-3(7).

FAQ

May a commissioner found in violation of the open meetings law have civil or criminal penalties brought against him or her?

Yes. The initial fine cannot exceed \$1,000. The maximum fine cannot exceed \$2,500 per violation whether criminal or civil.

What is the difference between a civil or criminal violation?

A civil violation can be brought for negligence, while a criminal penalty would require showing a willful and knowing violation.

DEFENSE AGAINST LAWSUIT FOR RELEASING INFORMATION IN OPEN MEETING

Any board, local agency, committee, or person who provides access to information in good faith reliance on the requirements of the open meetings law will not be liable in any action on account of having provided access to that information.⁸¹

Open Records Law

Public policy of the state strongly favors open government. Open government is essential to a free, open, and democratic society. Public access to public records is encouraged to foster confidence in government. It allows the public to evaluate how public funds are spent. It also allows the public to evaluate the efficient and proper functioning of its governments.

In Georgia, there is a strong presumption that public records should be made available for public inspection without delay. The open records law is broadly construed to allow the inspection of governmental records. The exceptions provided in the open records law, together with any other exception located elsewhere in the law, must be interpreted narrowly to exclude only those portions of records addressed by exception.⁸²

GENERAL REQUIREMENTS

RIGHT TO PERSONALLY INSPECT, COPY, OR PHOTOGRAPH OPEN RECORDS

All public records of the county or other agency must be open for personal inspection and copying by the general public except those records that are required to be kept confidential by an order of a Georgia court or those records that are exempted from being open to inspection by law.⁸³ 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.

The county 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.⁸⁴

PROCESS OF COMPLYING WITH THE OPEN RECORDS LAW

Open records requests may be made orally or in writing. A county may require that written requests be made to a particular person or persons designated by the county.

Upon receiving an open records request, the person in charge of the records (i.e., the chair or executive officer, department head, clerk specifically designated by a county as the custodian of the records, or designated open records custodian) should first determine whether the county has documents that are responsive to the request (i.e., do the requested documents exist and were they prepared, maintained, or received in the course of operating the county?).

If the county has documents responsive to the request, then the person in charge of the records must determine whether the documents fall within any of the exceptions to the open records law. If the records are exempt, the county must accurately identify all relevant provisions in law that allow or require the records to be considered confidential and not subject to disclosure. The county attorney should be consulted immediately if there is any uncertainty about releasing a record. (See Resources, Summary of Open Records Law Exemptions, p. 173.)

⁸² O.C.G.A. § 50-18-70(a).

⁸³ O.C.G.A. § 50-18-71(a).

⁸⁴ O.C.G.A. § 50-18-71(b)(1)(B).

Within three business days of receiving the request, the county must provide the requested records or notify the requestor, preferably in writing, as to whether the requested documents are public documents subject to disclosure or are exempt. If the county has designated an open records custodian, the three-day period begins when that person (or their alternate if they are absent) receives the request. If the county has not designated an open records custodian, the three-day period begins when the county receives the request.⁸⁵

If the requested records are readily available, the county must provide copies of or access to the requested documents within the three-day period.⁸⁶ If the records are subject to disclosure but not readily available, the person in charge of the records must provide a description of the requested documents and a timetable for their release to the requesting party. The description and timetable must be provided within the three-day period following receipt of the request.

If the county intends to seek reimbursement for the costs of search, retrieval, and copying of the requested records as allowed by O.C.G.A. § 50-18-71(d) and the charge is greater than \$25, the county must provide an estimate of the charge, preferably in writing, to the requestor **before** fulfilling the request. Again, the estimate must be provided to the requestor within the three-day period. If the charge is greater than \$500, the county may require the requestor to pre-pay.

Failure to affirmatively respond to an open records request within three business days as outlined above constitutes a violation of the open records law.

FAQ

What if a citizen requests documents, but does not mention the open records law? Or requests the documents under the Freedom of Information Act?

In either instance, although the open records law was not specifically invoked, the request should be treated as an open records request and handled accordingly.

Does an open records request have to be in writing?

No. The county may not require that an open records request be in writing. The county can, however, require that all written requests be made to a designated person. Also, only requests made in writing are subject to criminal and civil enforcement. Counties can facilitate the making of records requests in writing by providing simple forms for use by requestors and suggesting submittal of written requests by fax, e-mail, regular mail, or by submitting a request in person.⁸⁷

Can a county restrict access to public records to times when an employee is present to monitor the inspection?

Yes. However, every effort should be made to accommodate the requestor.

⁸⁵ O.C.G.A. § 50-18-71(b)(2).

⁸⁶ O.C.G.A. § 50-18-71(b)(1)(A).

⁸⁷ O.C.G.A. § 50-18-71(b)(3).

FAQ

May a county allow a requestor to review requested records, but refuse to allow him or her to make copies of the records?

No. The law gives citizens the right to both inspect and make copies of open records.

May the county stop a requestor from bringing a scanner or other device to record the image of a document or record?

No. So long as the scanner or device does not unreasonably interfere with the operation of the county, a requestor may bring a scanner or other device to record county records. However, the county may want to post a notice that some records may be copyright protected and that the requestor records them at his or her own risk.

May a reporter demand immediate access to a particular file?

While all records (except those exempted in O.C.G.A. § 50-18-72 or elsewhere) must be made available for inspection, counties may impose reasonable conditions as to the time and place that the records may be viewed. At the very least, counties have three business days to determine if the records are subject to disclosure and, if available, to provide access to or copies of the records. If the records exist and are subject to disclosure, but cannot be made available within three business days of the request, the county must provide a written description of the records with a timetable for their inspection and copying.⁸⁸

Does a county have to respond to an open records request made by an out-of-state resident who does not own property in the county?

Yes.

May a county require the name of the person requesting documents before providing access to documents?

No.

May a county require the reason for a records request before providing access to the documents?

No.

Who determines whether a requestor receives copies of records or is allowed to inspect the original records?

In general, it is up to the requestor to decide. One exception is an open record that contains information that must be kept confidential (see Resources, Summary of Open Records Law Exemptions, p. 173). In such a case, the county can make a copy, redact the confidential information, and allow the requestor to review the redacted copy.

If a citizen repeatedly makes voluminous open records requests but never picks up or pays the copying and administrative charges, can the county refuse to respond to future open records requests?

No. The county may not refuse to respond to an open records request, but it may require prepayment for future records requests by requestors that have not paid prior costs. Additionally, as long as the county provides notification of the estimated copying charges discussed in O.C.G.A. § 50-18-71(c)(3) (d), the county may enforce collection of the copying and administrative expenses incurred, regardless of whether the citizen retrieves the copies.

AGENCIES SUBJECT TO THE OPEN RECORDS LAW

Essentially the same agencies that are subject to the open meetings law, are also subject to the open records law including the board of commissioners, city councils, school boards, and other local agencies. (See Agencies Subject to the Open Meetings Law, p. 8.) Additionally, any association, corporation, or similar organization that is made up of and receives 33 1/3 percent of its operating budget from counties, cities, or school districts is subject to the requirements of the open records law.⁸⁹ Such local government associations include the ACCG, Georgia Municipal Association, the Georgia Sheriff's Association, and the Georgia School Boards Association.

PUBLIC RECORDS THAT MUST BE RELEASED

Public records are documents, papers, letters, maps, books, tapes, photographs, computer-based or generated information, data, data fields, or similar material prepared and maintained or received by a county or other agency or by a private person or entity performing a service or function for or on behalf of the county or other agency. Public records are also those documents that have been transferred to a private person or entity by the county or other agency for storage or future governmental use.⁹⁰

Copies of exhibits are open records in most cases, although an original exhibit tendered to a court as evidence in a criminal or civil trial is not open to public inspection without approval of the judge assigned to the case. Except for physical evidence used as an exhibit in a criminal or civil trial pertaining to certain offenses related to minors, if the court does not allow inspection of the actual exhibit, the records custodian must provide a photograph, photocopy, facsimile, or other reproduction of the trial exhibit.⁹¹

EXAMPLES OF OTHER LOCAL AGENCIES SUBJECT TO THE OPEN RECORDS LAW

- Airport authority
- Board of equalization
- Board of health
- Board of tax assessors
- Board of zoning appeals
- Clerk of court
- Development authority
- District attorney
- Hospital authority
- Housing authority
- Merit board
- Personnel review board
- Planning commission
- Recreation commission
- Regional commission
- Sheriff
- Tax commissioner
- Water and sewer authority

89 O.C.G.A. § 50-18-70(b)(1).
 90 O.C.G.A. § 50-18-70(b)(2).
 91 O.C.G.A. § 50-18-72(c).

FAQ

Are messages e-mailed on county computers considered public records subject to disclosure?

Yes. All e-mails are considered public records and must be disclosed unless they fall under an exemption to the open records law in O.C.G.A. §50-18-72 or some other statute. Be aware that deleted e-mails can oftentimes be retrieved and would be considered public documents as well.

Is e-mail sent from a commissioner's or employee's private e-mail account subject to disclosure?

Regardless as to whether the e-mail was sent from a county issued e-mail account or a personal account, if the information contained within the e-mail pertains to county business and does not fall under an exemption authorized by law, then it must be released.

What if the e-mail was sent from a personal computer?

It does not matter if the e-mail was sent from a county issued computer or a personal computer; if the e-mail is work-related and does not fall under an exemption, it is subject to the open records law.

Are messages on a county issued smartphone, cell phone, or other wireless handheld device subject to the open records law?

Yes. Unless a particular e-mail falls under an exemption authorized by law, all e-mails on a county issued blackberry, smartphone, cell phone, tablet, or computer must be released. Messages that are sent through an electronic medium usually create a record that is stored in the server of the county's computer system or hard drive of the electronic device.

May a county employee bypass the open records law if they purchase a phone and get reimbursed by the county for the monthly bills?

No. Any work-related records, as well as the employee's monthly bills, must be disclosed if requested unless the records fall under an exception authorized by law. For instance, the portions of the monthly bill that contain account numbers would be exempt. However, the rest of the bill would have to be disclosed. Likewise, e-mails, texts, and other messages related to county business would be subject to release.

Does a county employee have to disclose messages on their personal smartphone, cell phone, or other wireless handheld device if they do not receive reimbursement from the county?

If the message was sent or received in relation to county business, then it must be released unless it falls under an exception authorized by law. It does not matter if the message was sent through a county issued or personal device, as long as the message is related to county business.

Can the information that a county employee sends through instant messaging on their computer be subjected to an open records request?

Yes. Just like e-mail, there is a record of the information that is sent through instant messaging. An instant message can be subject to a request if it relates to county business, unless the information is an exemption authorized by law.

Are voicemails that are converted to a WAV file and delivered as e-mail to an employee's computer subject to the open records law?

If there is a record of the voicemail, regardless if it is a WAV file, tape, or other medium, it is treated just like any other record and would be subject to disclosure absent an exemption authorized by law.

FAQ

Are calendars an open record?

A paper or electronic calendar kept on county equipment is a record subject to disclosure. Similarly, portions of a personal calendar containing appointments related to county business may be subject to disclosure as well.

Is information posted on or through the county's social networking site (e.g., Facebook, Instagram, Twitter, etc.) subject to the open records law?

Yes. It is treated just like any other written record and would be subject to disclosure absent an exemption authorized by law.

What are "cookies" and how should a county respond to a request for this type of information?

"Cookies" are information downloaded to a computer when a website is accessed. This information should be treated just like any other type of record and should be subject to disclosure, absent an exemption authorized by law.

Are all contracts open records?

Any contract involving the county or other agency is an open record that must be disclosed. However, portions of the contract may be redacted if it falls within one of the exemptions authorized by law, but the non-exempt portions of the contract must be released. (See Records Exempted from the Open Records Law, p. 66.)

If a document such as an ordinance or contract is still in draft form, must it be provided if a citizen requests it?

Yes.

Do reports, evaluations, recommendations, etc., prepared by consultants for the county have to be released under the open records law?

Yes.

Does the county have to release documents that may be embarrassing?

Yes. If the documents relate to county business and do not fall under an exemption authorized by law, then they must be released.

Must a county provide requested data that is only available in an electronic format?

Yes. If the requested information does not fall within an exemption authorized by law then the county should do one of the following: (1) copy it onto electronic media for the requestor; (2) allow the requestor to review the information on the county's computer system; or (3) send the requested records via e-mail, if it is available and practicable.⁹²

Can a county send documents to the county attorney to avoid producing them in response to an open records request?

No. Records do not become confidential merely by sending them to the county attorney's office. Only if the documents are subject to the attorney-client privilege or the attorney work product privilege, pursuant to document O.C.G.A. § 50-18-72(a)(41) or some other exception authorized by law, are they exempt from disclosure.

FAQ

If a county official has county records at his or her home or office, are those records still subject to disclosure?

Yes. A public record that does not fall within an exception authorized by law is subject to disclosure, even if it is located in a county official's home or office.

Are handwritten notes on a scratch piece of paper made by a county commissioner or employee a public record?

Unless the subject matter of the notes is exempt from disclosure as authorized by law, handwritten notes are considered public records.

What if a citizen makes a request for documents that the county does not have?

The citizen must be notified, preferably in writing, within three business days of making the request, that there are no documents responsive to the request.

May a citizen make a request for copies of the minutes of all future meetings of the board of commissioners?

No. There is no requirement that counties must produce records that did not exist at the time of the request.⁹³

Are trial exhibits subject to open records?

While the original exhibit is not subject to release without approval of the court, a copy, facsimile, or photograph of the exhibit may be required to be made in order to provide the public access to most trial exhibits. (See Original Trial Exhibits, p. 78).

Are the real estate records in the superior court clerk's office subject to the open records law?

Yes. Any computerized index of county real estate deed records must be printed for purposes of public inspection no less than every 30 days; any corrections made must be included in the printout and reflect the time and date that the index was corrected.⁹⁴

If an individual sues the county, may he or she obtain documents relevant to the case through the open records law rather than pursuant to the Civil Practice Act?

Generally, unless some other exemption applies, an individual suing the county may receive public records through the open records law. However, a copy of the request and responding documents must also be provided to the county attorney.⁹⁵

93 O.C.G.A. § 50-18-71(b)(1)(A).

94 O.C.G.A. § 50-18-71(i).

95 O.C.G.A. § 50-18-71(e).

COUNTY RECORDS RETENTION REQUIREMENTS

Proper record retention is an integral component in complying with the open records law. While the open records law does not specify how long county records should be retained, O.C.G.A. § 50-18-99 (c) and (d) **requires** counties to keep records according to the records management program adopted by the board of commissioners. This plan must include a retention schedule, named records officer, and provisions for the maintenance and security of records. Counties that have not adopted a retention schedule are required to comply with the schedule established by the State Records Committee (i.e. local government retention schedule).⁹⁶

Depending on the type of record, they may be kept on a short term, long term, or permanent basis. Correspondence (i.e., emails, letters, other communications, etc.) is retained based on the subject matter and the significance of the communication which may be transitory (kept for useful life), general (kept for five years or duration of the record associated with the communication if longer than five years) or administrative (permanent). Below are examples of county government records that are required to be kept permanently:⁹⁷

- Administrative correspondence
- Aerial photography and other photographs of county property and functions
- Affirmative action policies
- Agendas
- Annual and grant reports
- Attorneys' opinions
- Audit reports
- Autopsy records/protocol
- Blueprints and specifications of county-owned buildings (for the life of the building)
- Board of equalization appeals
- Building codes
- Cemetery records
- Certificates of occupancy (retain for life of the building)
- County publications
- County road maintenance dockets
- Easements
- Emergency relief
- Final budgets
- Historic preservation files
- Maps
- Milestone events
- Millage rate resolutions
- Minutes
- Ordinances
- Plats/deeds
- Precinct boundary changes and files
- Racial breakdown of electors
- Radio beacon records
- Real property index cards
- Records schedules
- Resolutions
- Right-of-way agreements
- Speeches
- Standard operating procedures
- Voter registration cards for active voters
- Zoning variance applications/ordinances

Georgia Archives provides assistance to local governments on the length of time that specific documents must legally be maintained. However, it is also advisable that the person in charge of records review the types of records retained by the county with the county attorney and department heads to determine the purpose and usage of these records to ensure the records are being properly retained. (See Resources, Model Open Records Law Policy, p. 116).

⁹⁶ O.C.G.A. § 50-18-99(d).

⁹⁷ See O.C.G.A. § 50-18-99. Georgia Archives publishes the local government retention schedule as passed by the State Records Committee. The most recent schedule can be found on the Georgia Archives website at www.georgiaarchives.org.

OPEN RECORDS OFFICER/CUSTODIAN

Counties may designate one or more open records custodians to receive requests for inspection or copying of records. The records custodian can be the chair, chief executive, department head, clerk, or other designated county employee.⁹⁹

Counties that choose to designate a records custodian must provide for the designation in writing, notify the legal organ of the county, and post that information in a prominent place on the county website, if available.¹⁰⁰ The board of commissioners must also decide which county departments and offices are covered by the designated open records custodian(s). (See Resources, Open Records Model Forms, Open Records Officer Resolution, p. 115.)

TERMINOLOGY

The terms “records officer” and “records custodian” are used interchangeably throughout the open records law. For the purposes of this guide, “records custodian” is used. However, note that the records custodian referenced in the open records law has different responsibilities than the records custodian established by counties for record retention and management purposes.⁹⁸

FAQ

If a county has already designated a records custodian in accordance with the records retention law,¹⁰¹ is there a need to designate a records custodian under the open records law?

Georgia’s record retention law requires every county to designate a records custodian for record management purposes by ordinance or resolution. The open records law gives counties the option of designating a records custodian, in writing, for the purpose of responding to open records requests. Therefore, if a county previously adopted a resolution designating a records custodian and that custodian was given the authority to respond to open records requests, then there is probably no need for a subsequent designation.

However, if the original designation for the records custodian did not include language that authorized the custodian to perform duties beyond record retention and maintenance, then a new designation may be appropriate. (See Resources, Model Open Records Officer Resolution p. 115.) If it is determined that the county does not need a subsequent designation, the name of the records custodian must still be provided to the legal organ of the county and this information must be displayed in a prominent place on the county website, if available.

Why would a county want to designate a records custodian?

Unless records custodians are appointed, every person who has or maintains public records is considered a custodian of those records. By appointing an official records custodian, a county can more effectively manage its duties under the open records law. In particular, where requests are submitted in writing, the three-day response period does not begin until the custodian receives the request. Another benefit is that specialized training can be provided to records custodians so that errors and potential liability for failing to properly respond can be avoided.

98 See O.C.G.A. § 50-18-99.

99 O.C.G.A. § 50-18-71(b)(1)(B).

100 O.C.G.A. § 50-18-71(b)(2).

101 O.C.G.A. § 50-18-99.

FAQ

May a county require that all open records requests be directed to the designated records custodian?

While a county cannot require that all requests be in writing, the county can specify that if a written request is made, it must be directed to the records custodian.¹⁰² However, a verbal request may be made to any county official or staff.

If the designated records custodian is not in the office when a records request is submitted, does that mean that the three-day period starts when he or she returns?

No. The absence or unavailability of the designated records custodian cannot delay the county's response. It is recommended that the county provide for an alternate custodian or create a policy on how to respond when the primary designated records custodian is unavailable, in order to respond to requests within the three-day period.¹⁰³

DUTY TO USE ECONOMICAL MEANS OF PROVIDING COPIES

The county must utilize the most economical means available for providing copies of public records.¹⁰⁴

FAQ

If a large document can be transferred by e-mail to the requestor at a low cost, may a county instead insist on making hard copies, which may cost substantially more?

No. The more economical method of copying should be employed unless the individual requests a hard copy.

How should a county respond to an extremely broad request (e.g., to provide copies of any and all documents relating to the purchase of materials, equipment, and supplies by the county; to review and copy any correspondence to or from the county administrator; to review and copy every contract to which the county is a party)?

If requested documents cannot be made available within the three-business-day time period, then the county must provide a written description of the documents and a timetable for their release. Oftentimes, a requesting party is unaware that their request is so broad and would prefer to narrow the scope and reduce the cost of the request.

In order to respond to an overbroad inquiry in the most economical manner, the county should contact the requestor as soon as possible within the three-day period to be more specific (e.g., Does the requestor want every contract since the formation of the county or just those in the past three years? Is there a particular subject area in which the requestor is interested? etc.). Since the requestor is not required to provide this information, the county must still be prepared to provide in writing, within three business days, an estimate of the amount of time that it would take to respond to the request, the salary of the lowest-paid person capable of responding to the request, and the potential number of documents to respond to the request as originally stated.

102 O.C.G.A. § 50-18-71(b)(1)(B).

103 Id.

104 O.C.G.A. § 50-18-71(c)(1).

ELECTRONIC ACCESS TO RECORDS

The county's use of electronic record-keeping systems must not erode the public's right of access to records. Counties must produce electronic copies, printouts of electronic records, or data from the county's database fields at the option of the requestor. The county must not refuse to produce 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 the county's computer system, as long as such commands or instructions can be executed using existing computer programs that the county uses in the ordinary course of business to access, support, or otherwise manage the records or data.

A requestor may request that electronic records, data, or data fields be produced in the format in which the data or electronic records are kept by the county, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the county's existing computer programs support that format. The data or electronic records must be downloaded in that format onto suitable electronic media by the county.¹⁰⁵

FAQ

Is a county required to provide requested documents through e-mail if requested by a citizen?

If the documents are available in electronic format and are subject to disclosure, the county must send the documents via e-mail. If the county only has the records in a hard copy (i.e., paper) and does not have the capability of scanning the records into an electronic format, then the county is not required to provide the documents through e-mail. However, in such a case, the county would still be required to provide the requestor the opportunity to review and copy the records.

If a county receives a request for data or records from its database, is the county required to run a search?

Yes. Counties cannot refuse to produce electronic records, data, or data fields on the grounds that exporting data or redaction of exempted data will require inputting range, search, filter, report parameters, or similar commands or instructions into the computer system or database.¹⁰⁶

If the county retains requested information in an Excel spreadsheet, may they provide the requested information in a PDF if the requestor asked for it to be provided in Excel?

No. A requestor may request that electronic records, data, and data fields be produced in the format in which the data or records are kept by the county. In this case, since the county maintains the data or records in Excel, it must provide the information in Excel if specified by the requestor. Alternatively, the requestor could have specified the information in a standard export format, in which case the data or records are to be downloaded in that format onto suitable electronic media by the county. The county must comply with the format requested, if the county's existing computer programs support the export format.¹⁰⁷

105 O.C.G.A. § 50-18-71(f).

106 O.C.G.A. § 50-18-71(f).

107 Id.

FAQ

Is a county required to create and maintain a website to provide electronic access to county records?

No. However, a county may wish to consider placing many of its commonly requested documents (e.g., minutes, ordinances, resolutions, budgets, audits, policies, etc.) on a website to provide easier access to the public, as well as to potentially reduce the amount of staff time expended responding to such requests. Caution should be used in choosing the format for records made available through the county website. Records made available online should be posted in a PDF or read-only format that prevents the user from being able to change the content. It should be noted, however, that if a request is made to the county for an electronic document in the format that the document is kept by the county and the document is available in that format, the county is required to provide the record to the requestor in that format.¹⁰⁸

ACCESS TO E-MAIL, TEXTS, AND OTHER ELECTRONIC MESSAGES

Requests to inspect or copy electronic messages (whether in the form of an e-mail, text message, or other format) should contain information about the messages that is reasonably calculated to allow the county to locate the messages sought. The request should include the name, title, or office of the specific person or persons whose electronic messages are sought, if known, and, to the extent possible, the specific databases to be searched for such messages.¹⁰⁹

FAQ

Can a request be made for any and all e-mails about a new subdivision built in the county?

Yes, However, requestors should include the names or positions of the individuals whose e-mail records should be searched (i.e., the board of commissioners, members of the subdivision review committee, the county manager, the county clerk, the county engineer, the public works director, the road superintendent, etc.) or the particular databases that should be searched (i.e., the appraisal department, the tax commissioner's office, the building department, the planning and zoning office, the road department, etc.). If the request does not specify whose e-mail accounts are to be searched, the county should contact the requestor as soon as possible and ask for the request to be narrowed, advising the requestor of the higher cost of retrieval if not narrowed down.

108 O.C.G.A. §§ 50-18-71(f) and (h).

109 O.C.G.A. § 50-18-71(g).

FAQ

If a county manager receives an open records request for e-mails related to a particular issue that were deleted when he cleaned out his inbox the previous day, is there an issue?

Possibly. County officials and employees may only delete e-mails in accordance with the county's record retention schedule. County governments are required to have a records management program that includes the length of time each type of record must be kept.¹¹⁰ If the county has not adopted such a schedule, they are required to comply with the schedule established by the State Records Committee.¹¹¹ The determination on how long to keep email depends upon the subject matter of the email and the corresponding record retention requirements for that subject matter.

What if the county manager deliberately deleted e-mails to prevent disclosure?

Destruction of records for the purpose of preventing their disclosure is a felony punishable by 2 to 10 years in a state prison.¹¹²

TIME LIMIT FOR RESPONDING TO A REQUEST AND PRODUCING AVAILABLE RECORDS

The county must produce all records responsive to a request for inspection within a reasonable amount of time, not to exceed three business days of receipt of a request. In counties that have designated an open records custodian, the three-day period begins to toll once that custodian has received the request. It should be noted that the absence or unavailability of the designated open records custodian is not an excuse to postpone responding to the request. As such, the county should have an alternate records custodian or create a policy on how to handle these requests in the absence of the custodian in order to meet the three-day deadline.

When some, but not all, records are available within three business days, the county must provide the records that can be located and produced. When records are unavailable within three business days of receipt of the request, the county must provide the requestor (during the three business days following the request) with a description of those records and a timeline for when the records will be available for inspection or copying. The county must provide the responsive records or access thereto as soon as practicable.¹¹³

110 O.C.G.A. § 50-18-99.

111 O.C.G.A. § 50-18-99(d).

112 O.C.G.A. § 45-11-1.

113 O.C.G.A. § 50-18-71(b)(1)(A). The three business day record response period applies to most records requested through the open records law with the exception of most intercollegiate sports program records of the University System of Georgia, which have a 90 business day response timeframe.

FAQ

A newspaper demands that a county produce requested records within three days of the request. Must the county comply?

Yes. If the records are readily available and are not subject to any exceptions authorized by law, then the county must at least provide access to the documents and permit the newspaper to make copies within three business days of the request.

Note, however, that the law also allows the county to estimate the cost of providing records and to notify the requestor prior to providing the records if the estimated cost is greater than \$25. Therefore, the county may also respond within the three-day period by acknowledging that the records are available, but specifying the cost of accommodating the request.

A request for records is sent to the planning department, but is forwarded to the county engineer because he is the designated open records custodian of the requested records. Does the three-business-day time period begin to run on the date that the request is received by the planning department or the date received by the engineering department?

The three-business-day time period begins when the designated records custodian receives the request. In this example, it starts to run when the county engineer receives the request. It should be noted, however, that a county employee or official knowingly sending the request to the wrong department or person in order to delay the request may be punishable by civil or criminal penalties.¹¹⁴

If the files containing the requested records are stored off-site, does the county still have to provide access within three business days?

If the documents are readily available, even though stored off-site, then the county must provide access within the three days. However, if the requested documents are not available within three business days, the county may provide a written description of the documents to the requesting party within the three-day time period that includes a timetable establishing when the documents will be available.

What if the request for records is voluminous?

If the request for documents is so large that it is not possible to locate or copy the records within the three business days, the county must provide (within the three-day time period) a written description of the documents with a timetable establishing when the documents will be available to the requesting party.

What if the requested documents are exempted by the open records law or some other statute?

Within three business days of receiving the request, the county must notify the individual requesting the documents of the exact and correct code section, subsection, and paragraph in the law that exempts the documents from disclosure.¹¹⁵

114 O.C.G.A. § 50-18-74.

115 O.C.G.A. § 50-18-71(d).

FAQ

What if it is not clear whether the requested document is subject to disclosure?

The county attorney should be consulted immediately. If it remains uncertain whether a document falls into an exception authorized by law, the county has three business days to obtain an order from superior court staying or refusing the release of the document.

Although not required by law, in many instances, the requestor may be willing to accept a reasonable delay in releasing documents to allow the county to make a final determination. However, it would be up to the requesting party to decide whether or not a delay would be acceptable or for how long.

May a county merely send a letter acknowledging receipt of an open records request within three business days?

No. The law requires that the records custodian determine whether the records are open to the public and provide access to the records, if they are available, within the three-day period. Merely acknowledging receipt of an open records request is not sufficient to meet the requirement of the law.

RESPONDING TO REQUESTS FOR RECORDS THAT ARE EXEMPT

If the county is required or has decided to withhold all or part of a requested record, the requestor must be notified 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. In the event that the search and retrieval of records is delayed, then the specific legal authority must be provided no later than three business days after the records have been retrieved.¹¹⁶

FAQ

How long does the county have to determine whether the requested records are subject to release?

The county has up to three business days to determine whether the records fall within one of the exceptions authorized by law, as well as to provide the records, if available.

How does a records custodian properly specify the appropriate exemption?

The records custodian must cite the reference to the Official Code of Georgia Annotated (O.C.G.A.) that provides the legal authority for denying a member of the public access to information. For instance, if the record requested is a real estate appraisal on property that the commissioners are considering purchasing, the legal authority for denying access to the appraisal is O.C.G.A. § 50-18-72(a)(9); “50-18-72” is the code section; “(a)” is the subsection; and “(9)” is the paragraph.

¹¹⁶ Id. While the law requires that the specific legal authority exempting the requested record must be provided, failure to provide the specific legal authority does not automatically entitle the requestor to the document. *Chua v. Johnson*, 336 Ga. App. (2016).

FAQ

How does the records custodian know which exemption and code section, subsection, and paragraph number applies to the requested documents?

Most of the exemptions are contained in section (a) of O.C.G.A. § 50-18-72. However, there may be other relevant code sections that exempt records from disclosure. Examples include the exemption regarding use of elector lists (O.C.G.A. § 21-2-225); the exemption protecting the name of a rape victim (O.C.G.A. § 16-6-23); the exemption restricting access to wills (O.C.G.A. § 15-9-38); and the exemption for cable and video service provider financial information (O.C.G.A. § 36-76-6(d)), etc. (See Resources, Summary of Open Records Law Exemptions, p. 173.) If there is any uncertainty about whether an exemption applies, the county attorney should be immediately consulted.

What happens if an open records request is made for documents containing materials that are exempt and the records custodian incorrectly cites the code section, subsection, or paragraph?

While the law does not prohibit amending a response if the county discovers and wants to correct a mistake, it is important to be sure all exemptions are listed correctly in the response. Any uncertain exemptions should be verified by the county attorney.

What should a county official do if it is not clear whether a document is covered by an exception authorized by law?

The county attorney should be consulted. Note, however, that the Georgia Supreme Court has repeatedly determined that whenever there is doubt as to whether a record should be open or confidential, the Court is likely to rule that it is an open record (see Resources, Open Records Court Decisions and Attorney General Opinions, *Hardaway Company v. Rives*, p. 155).

If a reporter requests a document containing sensitive information that is clearly open to the public and does not meet any open records exceptions, can the board of commissioners deny the request if the document is available from another source?

No. If a record is open to the public, it does not matter whether the reporter can obtain the information from another agency or source.

WHEN ONLY A PORTION OF A RECORD FALLS WITHIN AN EXEMPTION

Exemptions to the open records law must be interpreted narrowly. Only the portion of a public record to which an exemption is directly applicable may be excluded. It is the duty of the county to provide all other portions of a record for public inspection or copying.¹¹⁷

FAQ

What if a portion of a document falls under an exception authorized by law?

The document must be released without the confidential information. The county should make a copy of the document and redact (i.e., mark out) any confidential information prior to releasing the document. The county is permitted to recoup costs for redaction if the redaction is performed by a full-time employee of the county.

If the county attorney redacts the requested documents to protect confidential information, can the county charge the cost of the attorney's fees to the requestor?

Generally, no. The exception would be for county attorneys that are full-time employees of the county rather than outside counsel.

REQUESTS FOR RECORDS BY PARTIES TO A CIVIL LAWSUIT

Requests by civil litigants (i.e., parties to a lawsuit) for records that are sought as part of or for use in any ongoing civil or administrative litigation against a county must be made in writing and copied to the county attorney at the same time as their submission to that county. The county must provide, at no cost, duplicate sets of all records produced in response to the request to the county attorney unless the county attorney elects not to receive the records.¹¹⁸

FAQ

A former employee has made an open records request for employee evaluations related to his or her lawsuit. How should the county respond?

This request must be handled like any other open records request, except that a copy of all documents provided to the former employee must also be given to the county attorney unless he or she has elected not to receive them.

The county sued a contractor for breach of contract. The contractor has now made an open records request for all documents related to the project. What should the county do?

The records must be provided to the contractor just like any other open records request. However, the documents must also be provided to the county attorney, unless he or she has let the county know that they do not want copies.

May the county charge the county attorney for the copies that it provides to an open records request related to a civil case in which the county is involved?

No. The law requires that a copy of the documents be provided to the county attorney free of charge unless the county attorney has indicated that he or she does not want to receive the copies.

FEES AND CHARGES FOR FULFILLING RECORDS REQUESTS

Fees for Copies of Public Records

A county may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents. In the case of other documents, the actual cost of producing the copy may be charged. For electronic records, the county may charge the actual cost of the media on which the records or data are produced.¹¹⁹ While not required by the open records law, a uniform rate should be established countywide for other documents and media so that different records custodians do not charge different rates for copying or producing documents that are not letter or legal sized. In some cases, higher fees may be permitted for copying or producing specific types of records if specified in law, such as computerized geographic information system (GIS) records.¹²⁰

FAQ

Can county taxpayers be reimbursed for the cost of providing copies to an individual?

Yes.¹²¹ To offset the cost to the taxpayers of providing records, counties may charge up to 10¢ per page for copies and the cost of search and retrieval.

Can a board of commissioners obtain a list of the county electors qualified to vote without charge from the board of registrars?

Yes. The board of registrars must provide such a list to the board at no charge.¹²²

Is it permissible for a superior court clerk to charge a higher fee for records or computer-generated data?

Yes. O.C.G.A. § 15-6-96 creates an exception authorizing the superior court clerk to distribute, sell, or otherwise market records of the clerk's office and to set fees greater than the 10¢ per page or the cost of the electronic media established in the open records law, pursuant to a contract entered into by the clerk and the requestor. If the clerk of superior court is also the clerk of another court, the same exception applies.

Administrative Charges for Search, Retrieval, and Other Costs of Complying with a Request

A county may impose a reasonable charge for search, retrieval, redaction, and production or copying costs for the production of records. Counties must use the most economical means reasonably calculated to identify and produce responsive, non-excluded documents. If fees for certified copies or other copies of records are specifically authorized or otherwise allowed by law, that specific fee must apply when those documents are being requested. In all other instances, the charge for search, retrieval, or redaction of records must not exceed the prorated hourly salary of the lowest-paid, full-time employee who, in the reasonable discretion of the records custodian, has the necessary skill and training to perform the request, except that no charge may be made for the first 15 minutes.¹²³

119 O.C.G.A. § 50-18-71(c)(2).

120 O.C.G.A. §§ 50-18-71(c)(2) and 50-29-2.

121 O.C.G.A. § 50-18-71(c).

122 O.C.G.A. § 21-2-227.

123 O.C.G.A. § 50-18-71(c)(1).

FAQ

Who decides which employee has the necessary skill and training to respond to the request?

If one has been appointed, the open records custodian may be assigned responsibility for determining who is capable of responding to the request. Whether or not a custodian has been appointed, it would be advisable for county management staff to develop standing procedures for determining which staff is to respond to open records requests.

If the lowest-paid, full-time employee capable of responding to the request is paid \$7.25 per hour and it takes two hours to retrieve and copy the requested documents, how much may the county charge to offset the cost to the taxpayers for the cost of providing access to the records?

Since there is no reimbursement for staff time for the first 15 minutes of work, the county may charge \$12.69 plus 10¢ per page copied.

What is the basis for calculating staff time for responding to the open records request?

The law only permits reimbursement of the employee's prorated hourly salary or the hourly equivalent of the employee's weekly or monthly salary.

Must a county provide, retrieve, and copy documents free of charge if the person requesting the documents files a pauper's affidavit?

No. Neither the open records law nor case law requires the county to provide records free of charge upon the filing a pauper's affidavit.¹²⁴

Must a county provide an estimated cost prior to fulfilling the request?

Only if the estimated cost is greater than \$25 is a county required to notify the requestor within three business days and provide an estimate of the costs.

Must a county provide the records requested regardless of cost?

No. If the estimated cost is more than \$25, the county may wait to search for and retrieve the records until the requestor agrees to pay the estimated costs (unless the requestor has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs). If the estimated costs for production of the records exceed \$500, the county may insist on prepayment of the costs before beginning search, retrieval, review, or production of the records.¹²⁵

May a county manager be assigned to retrieve minutes from an open meeting and thereby charge a higher hourly rate for doing so?

The salary of the county manager could be recovered only if the county manager is the lowest-paid, qualified, full-time employee who is capable of responding to the request. While there may be some sensitive or complex records that may be suitable for the county manager to retrieve, it is more likely to be appropriate for clerical staff to retrieve minutes and other basic records. Although the records custodian may be given the discretion to decide which employee has the necessary skills or training to carry out the task, he or she must use the most economical means available.¹²⁶

124 McBride v. Wetherington, 199 Ga. App. 7 (1991).

125 O.C.G.A. § 50-18-71(d).

126 O.C.G.A. § 50-18-71(c)(1).

FAQ

If a county attorney actually makes copies of documents that could have been copied by clerical staff, may the rate of the county attorney be charged?

No. Even if a higher-paid employee actually fulfills the request, the county may only charge the hourly rate of the lowest-paid person capable of performing the request.

May a county attorney's hourly rate be charged if he or she reviews the requested documents prior to their release to ensure that no confidential information is contained in the documents?

Generally, no. The Georgia Court of Appeals has held that the open records law does not permit the county to recover the cost of legal review of requested documents.¹²⁷ However, if the county's attorneys are full-time employees, their prorated hourly salaries can be charged if their services are necessary for redaction purposes.

May the cost to redact exempt information from a requested record be recouped?

Yes. The county may charge the same hourly wage of the lowest-paid, qualified full-time employee for the cost of redaction. As noted above, the prorated cost of a county attorney's time may be charged so long as he or she is a full-time employee of the county.

If there are two employees who are capable of making the copies—one full-time employee who earns \$8.00 per hour and one part-time employee who earns \$6.50 per hour—what hourly rate is used to compute the county's reimbursement?

The county must be reimbursed at the rate of \$8.00 an hour since the law specifies that the salary of the lowest-paid, full-time employee be used to determine the reasonable charge for responding to the request.

Fees When Records Are Requested by Other Public Agencies

The procedures and fees provided in the open records law do not apply to public records, including exempt records pursuant to O.C.G.A. § 50-18-72, that are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The records custodian must provide copies of these records to the requesting agency unless the records are privileged or disclosure to these agencies is specifically restricted by law.¹²⁸

127 Trammell v. Martin, 200 Ga. App. 435 (1991).

128 O.C.G.A. § 50-18-77.

FAQ

Who is not required to pay fees for open records requests?

A grand jury, the state, the federal government, another county, a city, a school board, a law enforcement agency, a district attorney, or a solicitor is not required to pay fees or follow any procedures in the open records law when requesting documents in conjunction with an ongoing administrative, criminal, or tax investigation.

Would a city requesting copies of the county's contract for architectural services be required to pay copying fees?

Unless the request was made as part of an ongoing administrative, criminal, or tax investigation, the city could be required to pay copying fees.

If a police officer requests a copy of the personnel files of co-workers, is he or she required to pay the copying fee?

If the police officer requests the documents as part of an ongoing investigation, then he/she would not be required to pay the copying fees. If he/she requests the documents for any other reason, he/she could be required to pay the copying fees.

May a county impose an administrative charge for the time to search and retrieve records for one of the agencies requesting documents for the purpose of an ongoing investigation?

No.

Fees for Trial Exhibits

The fees for producing records provided in O.C.G.A. §§ 50-18-71(c) and (d) also applies to producing photographs, photocopies, facsimiles, or reproductions of trial exhibits.¹²⁹

FAQ

How much may the superior court clerk charge for copies of trial exhibits requested under the open records law?

The records custodian is limited to the same reimbursement as for any other type of open records request. If the original trial exhibit has not been approved by the court for inspection by the public, then the records custodian must make a copy, photograph, or reproduction of the exhibit (except for exhibits in cases involving certain offenses against minors). The records custodian may receive up to 10¢ per page for letter and legal sized copies and the actual cost of providing a photograph or other reproduction, as well as administrative costs such as staff time to search for and retrieve the requested records.¹³⁰

129 O.C.G.A. § 50-18-72(c)(3).

130 O.C.G.A. § 50-18-71(c).

Fees for Records on Electronic Media

With the exception of computerized geographic information system (GIS) records, where requested information is maintained by computer, the county may charge the public the actual cost of the electronic media (e.g., CD, DVD, jump drive, etc.) for which the information is transferred and may charge for the administrative time involved.¹³¹

FAQ

How much may a county charge for the electronic media used to copy information from the county's computer system in response to an open records request?

The county may charge the actual cost of the electronic media, plus the salary (for all but the first 15 minutes of responding to the request) of the lowest-paid, full-time person with the training and skill necessary to copy the information onto the electronic media.¹³²

May the county charge \$10 per DVD to download requested electronic information?

The county may only charge the actual cost of the DVD.

May the county charge \$30 to download requested electronic records onto a 64GB flash drive?

As long as it is the actual cost of the flash drive, the county may charge that amount. However, it should be noted that the records custodian has the obligation to use the most economical means of providing access under the open records law.¹³³ So, if a less-expensive 2GB flash drive would easily hold all of the requested records, then it would be difficult to justify using and charging for a 64GB flash drive.

Fees for Geographic Information System (GIS) Records

Where geographic information is stored in electronic form, the county, regional commission, or other public agency housing the GIS data may license the use of the data, or charge a fee for access to the data. The fees collected may be set at a rate sufficient to pay for the cost of developing and maintaining the GIS, but may not be designed to establish a profit.

131 O.C.G.A. §§ 50-18-71(c)(2) and 50-29-2.

132 O.C.G.A. §§ 50-18-71(c)(1) and (2).

133 O.C.G.A. § 50-18-71(c)(1).

FAQ

Must GIS records be provided to a requestor who plans to use them for commercial purposes?

Yes. GIS records must be provided to a requestor who plans to use them for commercial purposes. There is no exemption for GIS records, despite the fact that there is oftentimes a significant commercial value to the records. However, the law allows the county to recover more than the actual cost of making the transfer of the information¹³⁴ because the cost of the transfer is fairly insignificant compared to the cost to the county to develop and maintain the GIS. As such, the county may charge a fee sufficient to pay the cost of developing and maintaining the GIS to the requestor.

May a county charge a license fee for access to its GIS?

Yes. The county may contract to sell access to information maintained in its GIS.¹³⁵ The license fee must be based upon the actual cost of building and maintaining the system.

What are the contract requirements for selling access to a county GIS database?

The contract must protect the security and integrity of the GIS by including provisions that limit the county's liability for providing the service, restrict the duplication and resale of the information provided, and ensure that taxpayers are fairly and reasonably compensated for the information or access provided.

Providing a Fee Estimate Before Searching for/Copying Records

If the county intends to seek more than \$25 for responding to a request, the records custodian must notify the requestor of the estimate of the costs within a reasonable amount of time, not to exceed three business days. The county may defer search and retrieval of the records until the requestor agrees to pay the estimated costs, unless the requestor has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. If responding to a request is estimated to cost more than \$500, the records custodian may insist on prepayment of the costs before beginning search, retrieval, review, or production of the records.¹³⁶

FAQ

Can the records custodian require prepayment if responding to a request will cost \$100?

Unless the requestor has not paid for a previous request,¹³⁷ the records custodian cannot require prepayment. The cost of the request must be estimated to cost more than \$500 before prepayment is required. However, the records custodian can wait to begin complying with the request until the requestor has committed to paying the cost, since it is estimated to cost more than \$25.

134 O.C.G.A. § 50-29-2(b).

135 Id.

136 O.C.G.A. § 50-18-71(d).

137 Id.

FAQ

Does a county have to provide an estimate in writing?

No. While it is not required, it is advisable to put the estimate in writing to ensure that the requestor is aware of the cost. Additionally, it provides a record of the request and of the county's response. If the requestor fails to pay the amount owed, the county can collect the fee in the same manner as it collects taxes, fees, or assessments owed to the county.¹³⁸

What if a county underestimates the charges?

Although not addressed in the law, the county should notify the requesting party that the actual costs will be greater than the estimate as soon as reasonably possible after it becomes known.

Collecting Unpaid Copying and Administrative Charges

Whenever anyone makes a records request but fails to pay the cost incurred by the county to search, retrieve, redact, or copy the records when the charges have been lawfully estimated and agreed to by the requestor, the county is authorized to collect the charges in any manner authorized by law for the collection of taxes, fees, or assessments regardless of whether the requestor inspects, accepts, or picks up copies of the records from the county.¹³⁹

If the person making a request for records has an outstanding balance for unpaid charges from a previous records request, the county may require prepayment from the requestor before complying with the new or any 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 is resolved.¹⁴⁰

FAQ

May a county collect unpaid records request charges if it did not provide an estimate of the charges before retrieving and copying the requested records?

No.

Is a county entitled to collect copying fees from requestors who fail to pick up requested copies?

The county is entitled to collect the fees to cover the cost of searching, retrieving, redacting, or copying of records requested, as long as an estimate of the charges was provided and agreed to by the requestor prior to the county fulfilling the request and the county has actually incurred the costs of responding to the request.

138 O.C.G.A. § 50-18-71(c)(3).

139 Id.

140 O.C.G.A. § 50-18-71(d).

FAQ

How does a county collect the charges for responding to an open records request when a requestor fails to pay?

As long as the county notified the requestor of the estimated charges prior to fulfilling the request as required by O.C.G.A. § 50-18-71(c)(3), then the county may collect the charges in the same way it collects taxes, fees, or assessments. For example, this means that the county can place a lien on the requestor's property or garnish the requestor's wages after obtaining a judgment against the requestor.¹⁴¹

May a county recreation commission, or other local agency, collect unpaid open records request charges in the same manner as the county?

Yes. Local agencies may collect the charges in the same manner that the county collects taxes, fees, or assessments. Similarly, joint county-city agencies can use any method of collection available to either counties or cities to collect unpaid open records request fees.

RECORDS THAT DO NOT EXIST

No public officer or county is required to prepare reports, summaries, or compilations not in existence at the time of the request.¹⁴²

FAQ

A citizen has requested that a county compile a report from data in the county files or database. Must the county comply?

No. While the citizen has a right to inspect or obtain copies of the data, the law clearly provides that the county does not have to prepare reports, summaries, or compilations that are not already in existence. The county must, however, provide reasonable access to the records.

A reporter requests a summary of a highly technical 200-page environmental report on the county's landfill be provided by the county, but a summary does not exist. Must the county prepare a summary?

No. The county is not required to prepare a summary that does not exist.

A citizen requests a list of all county employees who live within the county, with their salaries and dates of hire. While the county has records on all of its employees, salaries, addresses, and dates of hire, this information is not in any one document or report. How should the county respond?

The county is not required to go through several different documents to compile a report. The county should notify the citizen in writing that the desired information is contained in separate documents and such a report does not currently exist.¹⁴³ The notice should also contain (1) a description of the documents that contain the desired information; (2) an estimate of the number of documents that the county maintains containing the requested information; (3) an estimate of the copying cost;¹⁴⁴ and (4) an estimate of the salary cost that would be incurred to retrieve the documents.¹⁴⁵

¹⁴¹ See generally, O.C.G.A. §§ 12-8-39.3; 48-3-3; 48-3-12; 48-5-234.

¹⁴² O.C.G.A. § 50-18-71(j).

¹⁴³ See O.C.G.A. § 50-18-71(b)(1).

¹⁴⁴ See O.C.G.A. § 50-18-71(c)(2).

¹⁴⁵ See O.C.G.A. § 50-18-71(c)(1).

FAQ

A reporter has sent an e-mail posing several questions about a particular project to the county manager. Does the county manager have to answer the questions under the open records law?

If there are documents responsive to the request of the reporter, then the county manager should supply those documents (assuming that they are subject to release under the law), but the county manager is not obligated by the open records law to answer questions. However, as a matter of county policy or in the furtherance of developing a better relationship with the media, it is up to the county whether or not the questions are answered.

A citizen asks for copies of all existing county contracts related to the county water system, as well as any future contracts that may be executed by the county. How does the county respond?

The citizen is entitled to receive the existing water system contracts. As to future contracts, the county does not have to set up a system to provide documents that may or may not come into existence sometime in the future. The citizen may, however, request future documents at such time as they are eventually created.

RECORDS EXEMPTED FROM THE OPEN RECORDS LAW

While most records in a county's possession must be disclosed to members of the public upon request, there are a significant number of records that are exempt from disclosure under the open records law in O.C.G.A. § 50-17-82 or under another statute. However, not all exempt records are treated the same. Essentially, exempt records can be classified into three categories:

1. Where disclosure is prohibited by law (i.e., when the county is not allowed to release the records)
2. Where disclosure is at the discretion of the county (i.e., where the county can decide whether to release the record or keep it confidential)
3. Where public access may be withheld temporarily (i.e., where the county can keep the record confidential for a limited amount of time before being required to release it)

EXEMPT RECORDS: DISCLOSURE PROHIBITED

The records described in this section are not allowed to be released and counties that do release these records could face penalties.

Records Prohibited by Court Order

Public disclosure is not permitted for records that are specifically exempted from being open to inspection by court order.¹⁴⁶

FAQ

If there is a court order stating that a document may not be released, but the document does not otherwise fall into an exemption authorized by law, may the county release it?

No. The county must obey the court order. Such documents are not subject to inspection.

Records Where Confidentiality is Required by the Federal Government

Public disclosure is not permitted for records that are specifically required by the federal government to be kept confidential.¹⁴⁷

FAQ

If requested, should a county release individual death certificate records, information related to the cause of the death, conditions leading to the person's death, and information regarding surgical procedures conducted on the deceased?

If the county is not a “covered entity” under the Health Insurance Portability and Accountability Act (HIPAA), then the Attorney General has opined that death certificates are public records subject to the open records law and such disclosure is not prohibited by HIPAA. However, the social security number of the deceased should be redacted unless the requestor is a bona fide member of the news media who submits the appropriate affidavit under the open records law.¹⁴⁸

Medical Records and Invasions of Privacy

Public disclosure is not permitted for medical records, veterinary records, and similar files that would be considered an invasion of personal privacy. In general, invasion of privacy is public disclosure of private or secret facts, which if disclosed are offensive and objectionable. There must be a reasonable expectation of privacy on behalf of the individual whose personal information is being sought and the matter must be one that the public has no legitimate concern about in fact and in law. The courts have held that there is not an expectation of privacy for information that reflects a public official's or employee's performance of public duties.

Furthermore, medical information contained in public records must be redacted before allowing public access.¹⁴⁹

147 O.C.G.A. § 50-18-72(a)(1).

148 2007 Op. Att'y Gen. No. 07-04.

149 O.C.G.A. §§ 50-18-72(a)(2); 50-18-72(a)(20)(A); 50-18-72(a)(21).

FAQ

Should employee medical records be disclosed?

No. In fact, medical information must be redacted from any open records request.¹⁵⁰

May the name or records of an individual who has sought treatment through a drug treatment and education program maintained by the county board of health be released?

No. O.C.G.A. § 26-5-17 provides that this information is confidential and not subject to disclosure, unless the drug dependent person whose records are sought has authorized the release in writing or unless required by a court order.

May a county health department's medical records ever be released?

Yes. Under O.C.G.A. § 9-11-34(c)(2), a party to a lawsuit may serve a request for production of documents on the health department to obtain medical records on a patient. Within 20 days of the request, the health department, any of the parties to the lawsuit, or the patient whose records are being sought, may file an objection with the court in which the lawsuit is pending. If no objection is filed within 20 days, then the health department must comply with the request, except for records concerning mental illness covered by O.C.G.A. § 37-3-166, confidential records relating to AIDS covered by O.C.G.A. §§ 24-12-20 and 24-12-2, records concerning developmental disabilities covered by O.C.G.A. § 37-4-125, and records concerning alcohol and drug treatment covered by O.C.G.A. § 37-7-166, which may not be released.

Would the release of records from a sexual harassment investigation be an invasion of privacy?

While such a request should always be forwarded to the county attorney prior to the release of the records, case law has held that a public officer's privacy interest in having the investigation of a sexual harassment claim against that officer publicized is outweighed by the public's right to access the information under the open records law (see Resources, Open Records Court Decisions and AG Opinions, *Fincher v. State*, p. 159). In other words, where sexual misconduct arises out of a public officer's performance of his job duties, there is no legitimate expectation of privacy and such records likely must be released.

Would the release of a personnel file be an invasion of privacy?

Generally, the release of a personnel file for a county official or employee would not be an invasion of privacy. While most of the information contained in the files is subject to disclosure, portions must be withheld or redacted. (See Personal Information about Public Employees and Officials, p. 72.)

However, O.C.G.A. § 35-8-15 does exempt certain employment records maintained by the sheriff's office or police department.

Is it an invasion of an employee's privacy to provide salary information to a citizen making such a request?

No. Compensation paid to county employees and officials must be released.

Should the names, addresses, year of birth, and voting districts of electors be released upon receiving such an open records request?

Yes. Information may be reviewed by the public in accordance with O.C.G.A. § 21-2-225 on individuals who possess all of the qualifications for voting and who have registered to vote, with the exception of bank statements, month and day of birth, social security numbers, e-mail addresses, driver's license numbers, and the locations at which the electors applied to register to vote. However, the original application for voter registration is not open for public inspection without a court order.

Personal Information in Public Records

Many public records contain personal information about citizens who own property, reside, work for, or do business in the county. The open records law requires counties to protect much of that information from disclosure to the public. The following information must generally be redacted prior to disclosing records requested pursuant to the open records law:

- An individual's social security number
- Mother's birth name
- Credit card and 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 designated in a public record
- Personal e-mail address or cellular telephone number
- Day and month of birth
- Information regarding public utility, television, internet, or telephone accounts held by private customers

However, social security numbers and the day and month of birth of individuals other than public employees may be released upon a written request, signed under oath by a representative of a news media organization, which attests the information is to be used in connection with news gathering and reporting.

Public disclosure of personal information in public records may be released in limited circumstances as follows:

- If contained in the records or papers of any court or derived from any court, including all secured transactions records maintained pursuant to the Unified Commercial Code—Secured Transactions¹⁵¹
- If requested in an official capacity by a court, prosecutor, or publicly employed law enforcement officer, or their authorized agent
- If requested by a federal, state, or local government employee who is obtaining the information for administrative purposes (in which case, subject to all applicable federal law); further access to the information will continue to be subject to the open records law
- If authorized by a court order
- If requested by the person about whom the information is being maintained. In such case, a person or an authorized agent may receive his or her own personal information. The county must require proper identification of that person or agent requesting the information, or proof of authorization, as determined by the county.

151 O.C.G.A. § 11-9-101 *et seq.*

- If it contains a deceased individual's day and month of birth and mother's birth name
- If it contains credit or payment information in connection with a request by a consumer reporting agency,¹⁵² as defined under the federal Fair Credit Reporting Act¹⁵³
- In connection with the county's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debt owed to the individual or entity
- If it contains personal information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes
- If it contains the date of birth within criminal records

The above list of records and information may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains these records or information and knowingly and willfully discloses, distributes, or sells them to an unauthorized recipient or for an unauthorized purpose is guilty of a misdemeanor of a high and aggravated nature and upon conviction will be sentenced to a fine up to \$5,000 and/or 12 months in jail.¹⁵⁴ Any person injured by these actions has a cause of action for invasion of privacy.

If the records custodian has a good faith reason to believe that a pending request for records has been made fraudulently, under false pretenses, or by means of false swearing, the records custodian must apply to the superior court of the county where the records are maintained for a protective order limiting or prohibiting access to the records.

These requirements are meant to supplement and not replace state or federal law that requires, restricts, or prohibits access to personal information as provided in O.C.G.A. § 50-18-72(a)(20) (A) and only provides for the regulation of the methods of access of this information if not otherwise provided, restricted, or prohibited.¹⁵⁵

FAQ

If a county accepts payments by credit card, should the credit card account information provided be released under the open records law?

No. In fact, except when provided to the media and others under the terms of O.C.G.A. § 50-18-72(a) (20) described above, the county is prohibited from releasing such information.

152 “The term ‘consumer reporting agency’ means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” 15 U.S.C. § 1681a(f).

153 15 U.S.C. § 1681 *et seq.*

154 O.C.G.A. § 17-10-4.

155 O.C.G.A. § 50-18-72(a)(20).

FAQ

May a county release social security numbers, bank account, credit card, and debit account information, medical information, insurance information, financial data, mother's birth name, or day and month of birth contained in the county records?

No. Under most circumstances, the county is prohibited from releasing personal information that could be used to steal an identity or for other fraudulent purposes. However, if a reporter requests social security numbers and day and month of an individual's birth and submits a written request signed under oath, the county must release that information on anyone except public employees. Additionally, these records may be released if they are contained in court papers. Generally, government officials and employees may obtain access to such information if they are seeking the information in an official capacity or for an official purpose. Similarly, consumer reporting agencies may obtain credit and payment information, and date of birth and mother's birth name may be released for deceased individuals. Despite limits on others accessing personal information, individuals may obtain personal information about themselves when maintained by the county.

What if an individual performing genealogical research requests a copy of records indicating a mother's birth name and the day and month of his or her great-grandmother's birth?

The county may release records containing the mother's birth name and day and month of the great-grandmother's birth if the individual's mother and great-grandmother are deceased.

Should the superior court clerk redact all protected personal information from Uniform Commercial Code filings and other public court documents?

No. Information maintained by courts, including information on secured transactions, may still be accessed.

May protected personal information be released to consumer reporting agencies, such as Equifax?

Credit and payment information may be released to consumer reporting agencies.

May individuals obtain personal information about themselves in county records, even though it is otherwise confidential?

Yes.

May collection agencies obtain protected personal information?

If the collection agency is assisting the county in collecting unpaid debts owed to the county, the county may release information that will assist in the collection.¹⁵⁶

Should a county release social security numbers and day and month of birth information to news reporters?

Yes. If the reporter submits a written request, signed under oath, stating that the reporter is a representative of a news media organization and is seeking the information in connection with news gathering and reporting, the county may release social security numbers and dates of birth of anyone except public employees.

FAQ

Should a county board of commissioners or school board release social security numbers and day and month of birth information of schoolteachers or other public employees to news reporters?

No. In fact, the county school board is prohibited from releasing this information, even if the reporter makes a written request under oath.

What if the records custodian believes that a fraudulent request for protected personal information has been made?

The records custodian must apply to the superior court for a protective order limiting or prohibiting access to the records within three business days of the request.¹⁵⁷

What if the records requestor improperly uses protected personal information?

If the records requestor knowingly and willfully discloses, distributes, or sells personal information to an unauthorized person or for an unauthorized purpose, he or she may be liable for an invasion of privacy, as well as be found guilty of a misdemeanor of a high and aggravated nature, which is punishable by 12 months imprisonment and/or a \$5,000 fine.

May other governmental officials have access to protected personal information?

Yes. As long as they are seeking the information as part of their governmental duties, protected personal information may be released to governmental officials.

Personal Information About Public Employees and Officials

Public disclosure is not permitted for records concerning public employees that reveal the following information about the employee:

- Home address
- Home telephone number
- Day and month of birth
- Social security number
- Insurance or medical information
- Mother's birth name
- Credit card and debit card information
- Bank account information
- Account number
- Utility account number
- Password used to access his or her account

TERMINOLOGY

The term "public employee" as used in this section means any officer, employee, or former employee of the state or its agencies, departments, or commissions; any county or municipality or its agencies, departments, or commissions; other political subdivisions of this state; teachers in public and charter schools and nonpublic schools; or early care and education programs administered through the Department of Early Care and Learning.¹⁵⁸

157 O.C.G.A. § 50-18-72(a)(20)(D).

158 O.C.G.A. § 50-18-72(a)(21).

- Financial data or information other than compensation by the county
- Unlisted telephone number (if so designated in a public record)
- Identity of the public employee's immediate family members or dependents

This exemption does not apply to public records that do not specifically identify public employees or their jobs, titles, or offices.

FAQ

Are personnel files open records?

Although personnel files are open records, some of the information contained therein may not be subject to disclosure. For example, social security numbers, insurance information, medical information, information that would constitute an invasion of privacy,¹⁵⁹ information of an ongoing investigation or within 10 days of a completed investigation (related to the suspension of, termination of, or complaint against an employee or officer),¹⁶⁰ and confidential employee evaluations¹⁶¹ do not have to be released or may have to be redacted under the open records law.

May a county refuse to release the social security numbers of its employees?

Yes. In fact, social security numbers, mother's birth name, credit card information, bank account information, financial data, medical and insurance information, etc. must be redacted, (i.e., marked through or whited out) from most open records requests.¹⁶²

What should a county do when an open records request is made to review an employee's personnel file?

A copy of any portion of the file that contains information exempted from release under the open records law should be made and the confidential portions should be redacted before release.

An open records request is made to review a terminated employee's personnel file that was purged pursuant to a settlement agreement. Is the fact that the file has been purged subject to release?

Litigation over termination of an employee may result in a settlement agreement that requires purging certain information about the employee. In such a case, the personnel file must contain a notation that the file has been purged as a condition of a settlement agreement. Furthermore, if another governmental agency contacts the county about the former employee's work history in order to make a hiring decision, the county must disclose the fact that the personnel file was purged pursuant to a settlement agreement.¹⁶³

159 O.C.G.A. §§ 50-18-72(a)(2) and 20.

160 O.C.G.A. § 50-18-72(a)(8).

161 O.C.G.A. § 50-18-72(a)(7).

162 O.C.G.A. § 50-18-72(a)(21).

163 O.C.G.A. § 45-1-5.

Electronic Signatures

An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.¹⁶⁴ Public disclosure is not permitted for 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.

Records of Children Participating in Public Recreation Programs

Records of athletic or recreational programs offered by the state, a county, or other local government that include information identifying children 12 years of age or under by name, address, telephone number, or emergency contact, must be redacted to delete the information that would identify a child.¹⁶⁵

FAQ

May the county parks and recreation department provide a list of participants in the youth football program to a vendor of sporting goods?

Any portion of a record that would identify children 12 years old or under must be redacted.

Portions of Records Containing Trade Secrets

Public disclosure is not permitted for records containing trade secrets obtained from a person or business that is required by law, regulation, bid, or request for proposal to be submitted to a county. If the person or business submitting the records wants to protect trade secrets contained in those records from disclosure to competitors or other requestors, an affidavit must be attached to the records stating that specific information in the records is a trade secret.¹⁶⁶

TERMINOLOGY

According to the Georgia Trade Secrets Act of 1990, a “trade secret” is information—such as data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial plans, financial data, product plans, customer lists, supplier lists, etc.—that derive economic value from not being generally known by, or available to, the public.¹⁶⁷

164 O.C.G.A. §§ 10-12-2(8) and 50-18-72(a)(23).

165 O.C.G.A. § 50-18-72(a)(27).

166 O.C.G.A. § 50-18-72(a)(34).

167 O.C.G.A. § 10-1-761(4).

FAQ

May a trade secret be disclosed by a county?

No. A trade secret must be kept confidential.

Many vendors with the county mark their contracts as confidential and proprietary. Are these contracts trade secrets?

A company cannot merely stamp an otherwise open record with “confidential” or “proprietary” to fall under the trade secret exemption to the open records law. The company must include an affidavit stating that specific portions of the contract contain trade secrets.

Why would a county require a company to provide trade secrets?

In order to respond to an invitation to bid or request for proposal, a bidder may have to submit certain information that may be proprietary to the company responding. The company may deem the information to be a trade secret and want to protect that information from disclosure to competitors that might make an open records request for the information.

What should the county do if an open records request is made for a document for which a trade secrets affidavit is provided?

While the open records law allows the county to make some determination about the existence of a trade secret, the county typically will not be in a position to make that determination. After consulting with the county attorney, and keeping in mind that the actual dispute is between the requestor and the party claiming the trade secret, the better practice for counties is to deny the request for the records based on the trade secret affidavit and, to the extent possible, let the actual parties with the disagreement resolve the question in court.

How should the county handle requests for documents that do not include an affidavit affirming that trade secrets were included?

If there is no affidavit, the trade secrets exemption does not apply. The documents must be released.

What happens if a county, believing that it is required to release the information pursuant to the open records law, unintentionally releases a trade secret?

According to the Georgia Trade Secrets Act of 1990,¹⁶⁸ the county could be liable for damages and attorneys’ fees for certain types of releases.¹⁶⁹ However, if the county provides access to the information under a good faith belief that the records were subject to release under the open records law, then it will not be liable for damages.¹⁷⁰

¹⁶⁸ O.C.G.A. § 10-1-760 *et seq.*

¹⁶⁹ *Id.*

¹⁷⁰ O.C.G.A. § 50-18-73(c).

Portions of Records Containing Proprietary Information

Public disclosure is not permitted for data, records, or information of a proprietary nature. Proprietary information is produced or collected by or for faculty or staff of state institutions of higher learning or other governmental agencies through 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. The data, records, or information of the study or research has not been publicly released, published, copyrighted, or patented.¹⁷¹

FAQ

Should a county keep proprietary information confidential if it is requested under the open records law?

A county may only withhold proprietary information if (1) the information has not already been publicly released, published, copyrighted or patented; and (2) the information was collected by the county while performing a study or research on commercial, scientific, technical, or scholarly issues.

If a contract entered into between a county and private company designates all documents generated by the company as confidential or proprietary, may a county refuse to disclose these documents if a request is made under the open records law?

Merely because a company designates its documents as proprietary or confidential does not mean that the county may withhold the documents if requested by a member of the public. Most companies that regularly deal with government understand the open records requirements placed on counties and should accept a contract term that company documents in the possession of the county will be treated as confidential only to the extent permitted by the open records law.

Records Containing Confidential Tax Matters

Public disclosure is not permitted for records containing confidential tax information or that involve certain tax matters as determined by state and federal law.¹⁷²

FAQ

May a county release information provided by a business to determine the amount of occupation taxes due?

No. O.C.G.A. § 48-13-15 prohibits the county occupation tax department from releasing such information except (1) to other local governmental agencies for occupation tax purposes; or (2) for the purpose of collection or prosecution for failure to pay occupation tax.

171 O.C.G.A. § 50-18-72(a)(35).

172 O.C.G.A. § 50-18-72(a)(43).

FAQ

Are depreciation schedules submitted to a board of tax assessors in an appeal of an assessment on property subject to disclosure?

No. In accordance with O.C.G.A. § 48-5-314(a), documents such as taxpayers' accounting records, balance sheets, profit and loss statements, and income and expense statements are exempt from the open records law. Such information may only be accessed by certain authorized personnel. While such information may be disclosed, if necessary, to collect taxes through an administrative or court proceeding, it is a misdemeanor to knowingly furnish this information to a person not authorized by law to receive it.

May a tax commissioner furnish information contained in tax returns, reports, and schedules to tax officials in other states?

Yes. Provided that the information contained in the documents will be treated as confidential in the other state and the information is being used for tax purposes, the tax commissioner may enter into agreements to furnish tax returns, reports, and schedules.¹⁷³

Is the real property digest or a return from an ad valorem taxpayer confidential?

No.

Are field cards and other records containing information gathered by the personnel of the board of tax assessors confidential?

No. O.C.G.A. § 48-5-314(a)(2) specifically allows for the disclosure of this type of information.

Computer Programs and Software

Public disclosure is not permitted for records consisting of any computer program or computer software used or maintained in the course of operation of a county, provided that the data generated, kept, or received by a county is subject to inspection and copying.¹⁷⁴

FAQ

Should a county comply with a citizen request to obtain a copy of the county's Microsoft Office software?

No. In fact, complying with such a request would place the county in violation of its licensing agreement with the software manufacturer.

Should a county comply with a citizen request to obtain a copy of a database created by the county?

Yes. A copy of a database must be provided, unless the information contained within the database is exempted by law.

173 O.C.G.A. § 48-2-16.

174 O.C.G.A. § 50-18-72(a)(44).

Original Trial Exhibits

Unless otherwise permitted by law, the original exhibit provided to the court as evidence in a criminal or civil trial is not open to public inspection without approval of the judge assigned to the case. If the court does not approve release of the original exhibit, then the records custodian must, upon request, provide a photograph, a photocopy, a facsimile, or other reproduction of the exhibit. Fees for the production of a record provided in O.C.G.A. §§ 50-18-71(c) and (d) also apply to the production of trial exhibits.

Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of O.C.G.A. § 16-12-100 is not open to public inspection except by court order. If the judge approves inspection of physical evidence, the judge must designate, in writing, the facility owned or operated by an agency of the state or local government where the physical evidence may be inspected. If the judge permits inspection, the property or material cannot be photographed, copied, or reproduced by any means. Any person who violates these provisions is guilty of a felony, which upon conviction is punishable by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000, or both.¹⁷⁵

FAQ

May a citizen review a business ledger used as an exhibit in a small claims court case under the open records law?

The actual trial exhibit in such a case is not subject to public inspection without the approval of the magistrate assigned to the case. The same would apply to exhibits in cases in superior, state, and juvenile courts. However, a citizen may request to review a copy or photograph of the business ledger.

If the court does not approve a request to review a trial exhibit, such as a gun found at the scene of a crime, how does the court clerk or administrator respond to an open records request by a reporter?

The clerk may photograph, photocopy, or otherwise reproduce the trial exhibit and submit the reproduction to the person making the open records request.

Does the county have to provide a copy or reproduction of physical evidence in a trial where sexual exploitation of a child is alleged?

Physical evidence where sexual exploitation of a child is alleged is not allowed to be inspected under the open records law without a court order. Even if the judge allows inspection of the physical evidence, it cannot be photographed, copied, or otherwise reproduced.

Vital Records

Any form, document, or other written matter required by law, rule, or regulation to be filed as a vital record (under the provisions of O.C.G.A. § 31-10-1 *et seq.*, which contains information exempt from disclosure under O.C.G.A. §§ 31-10-25 and 19-7-46.1) that is temporarily kept or maintained in any file or with any other documents in the office of a judge or clerk of any court prior to filing with the Department of Public Health is **not subject to inspection** by the general public, even though other papers or documents in the file may be open to inspection.¹⁷⁶

Vital records include birth certificates, death certificates, marriage certificates, divorce certificates, annulments, and other records related to these documents.¹⁷⁷

FAQ

Are vital records open to the public?

No. It is unlawful for any person to permit inspection of vital records, to disclose information contained in vital records, or to copy or issue a copy of all or part of any such record, except as authorized by O.C.G.A. § 31-10-1 *et seq.*, as well as the regulations of the Department of Public Health, or by order of a court as in inspection warrants regulated by O.C.G.A. §§ 31-10-25 and 19-7-46.1.

Who may obtain copies of a birth certificate?

According to O.C.G.A. § 31-10-26, only the following persons may obtain copies of a birth certificate:

- The person whose record of birth is registered
- The parent, guardian, or temporary guardian of the person whose record of birth is registered
- The living legal spouse or next of kin, or legal representative (or person who in good faith has applied and produced a record of application to become the legal representative) of the person whose record of birth is registered
- A court of competent jurisdiction upon its order or subpoena
- Any governmental agency, state or federal, if the certificate is needed for official purposes

¹⁷⁶ O.C.G.A. §§ 50-18-76; 31-10-25(f).

¹⁷⁷ O.C.G.A. § 31-10-1(18).

FAQ

Who is authorized to receive a voluntary acknowledgement of paternity or voluntary acknowledgements of legitimization?

The following persons are authorized to receive a voluntary acknowledgement of paternity or legitimization upon written request:

- The person who signed the acknowledgment and his or her guardian or temporary guardian
- The person whose paternity was acknowledged, if he or she is at least 18 years of age
- The guardian, temporary guardian, or legal custodian of the person whose paternity was acknowledged
- The living legal spouse or next of kin, or legal representative (or person who in good faith has applied and produced a record of such application to become the legal representative) of the person whose paternity is registered
- A court of competent jurisdiction upon its order or subpoena
- Any governmental agency, state or federal, provided that such certificate shall be needed for official purposes
- A member in good standing of the State Bar of Georgia, provided that such certificate shall be needed for purposes of legal investigation on behalf of a client
- A child-placing agency, provided that such certificate shall be needed for official purposes¹⁷⁸

Cable and Video Service Provider Financial Information

Public disclosure is not permitted for statements showing the following state cable or video franchise information:

- The aggregate amount of the state cable or video service franchise holder's gross revenues attributable to the city or unincorporated areas of the county (specifically identifying subscriber, advertising, and home shopping services revenues insofar as the franchise holder's existing billing systems include the capability)
- The amount of the franchise fee payment due to the city or county
- Any records or information furnished or disclosed by a cable service provider or video service provider to an affected city or county¹⁷⁹

FAQ

Is the county required to release information on the franchise fee amount paid to the county by the cable or video provider?

No. The law specifically exempts this information.

178 O.C.G.A. §§ 19-7-46.1(e)(2); 30-10-26.

179 O.C.G.A. § 36-76-6(d).

Records of Confidential Employee Evaluations

Public disclosure is not required for records consisting of confidential evaluations submitted to a county or examinations prepared by a county in connection with the appointment or hiring of a public officer or employee.¹⁸⁰

EXEMPT RECORDS: DISCLOSURE DISCRETIONARY

The records discussed below are those that may be kept confidential, but it is not required.

Records Where Public Access Is Not Required by Law

Public disclosure is not required for records that are specifically exempted from being open to inspection by the general public by law.¹⁸¹

FAQ

If a record is not listed in O.C.G.A. § 50-18-72 as a record exempt from the open records law, should it be released?

If a record is not listed in O.C.G.A. § 50-18-72 or some other statute as being exempt from disclosure, then it is an open record that must be released. (See Resources, Summary of Open Records Laws Exemptions, p. 173.)

Records Identifying Confidential Sources or Investigative Materials

Except as otherwise provided by law, public disclosure is not required for records compiled for law enforcement or prosecution purposes to the extent that production of these records is reasonably likely to disclose the identity of a confidential source; disclose confidential investigative or prosecution material that would endanger the life or physical safety of any person or persons; or disclose the existence of a confidential surveillance or investigation.¹⁸²

FAQ

May the name of a citizen who informs the county code enforcement officer about a zoning violation committed by a neighbor be kept confidential?

If the complaint results in an investigation or prosecution of the ordinance violation against the neighbor, the complaining citizen's name may only be withheld if his or her life or physical safety would be in danger due to the release of the name.

180 O.C.G.A. § 50-18-72(a)(7).

181 O.C.G.A. § 50-18-71(a).

182 O.C.G.A. § 50-18-72(a)(3).

Accident Reports

Public disclosure is not required for individual Georgia Uniform Motor Vehicle Accident Reports, unless a written statement of need is submitted by the requesting party to the records custodian providing the specific need for the report as permitted under the open records law. However, any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report is entitled, either personally or through a lawyer or other representative, to receive a copy of the report. The Georgia Uniform Motor Vehicle Accident Report is not available in bulk for inspection or copying by any person unless they have a written statement showing the need for each report pursuant to the requirements of the open records law.

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

- has a personal, professional, or business connection with a party to the accident;
- owns or leases an interest in property allegedly or actually damaged in the accident;
- was allegedly or actually injured by the accident;
- was a witness to the accident;
- is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
- is a prosecutor or a publicly employed law enforcement officer;
- is alleged to be liable to another party as a result of the accident;
- is an attorney stating the requested reports are needed as part of a criminal case or an investigation of a potential claim that a roadway, railroad crossing, or intersection is unsafe;
- is gathering information as a representative of a news media organization;
- is conducting research in the public interest for accident prevention, prevention of injuries or damages in accidents, determination of fault in accidents, or other similar purposes (note for the release of the report, the accident must have occurred more than 30 days prior to the request and the name, street address, telephone number, and driver’s license number must be redacted); or
- is a governmental official, entity, or agency, or its authorized agent, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties.¹⁸³

FAQ

Should accident reports be released under the open records law?

Generally, accident reports need not be released except to certain individuals specified in the open records law.

FAQ

Who may obtain copies of accident reports?

The parties and witnesses involved or injured in the accident (and their attorneys or other representatives) and the insurance companies may obtain copies of accident reports. Copies may also be given to an individual who

- may be liable as a result of the accident;
- is conducting “public interest” research;
- is a representative of a news media organization;
- is an attorney needing the accident report as part of a criminal case or an investigation involving the safety of a road, railroad crossing, or intersection; or
- is a government official or agent needing the report to carry out a government function or duty.

Additionally, a district attorney, solicitor, or law enforcement officer may obtain a copy of an accident report.

Is there a special procedure for obtaining accident reports?

Unless otherwise exempted (see above), the requesting party must file a written statement of need that indicates that the party is authorized to access the accident report.

Who must file a statement of need to gain access to an accident report?

The following persons or entities are required to file a statement of need to gain access to an accident report:

- Anyone with a personal, professional, or business connection with a party to the accident
- Anyone who owns or leases a vehicle or other property damaged in the accident
- Anyone injured by the accident, but not named or identified in the accident report
- A witness to the accident who is not named or identified in the accident report
- The insurance company
- Anyone alleged to be liable as a result of the accident
- Any attorney requesting the accident report as part of a criminal case or an investigation into the safety of a roadway, railroad crossing, or intersection
- A representative of a news media organization
- Anyone conducting research in the public interest

Who can have access to an accident report without filing a statement of need?

Anyone named or identified in the accident report is entitled to receive a copy of the accident report without filing a statement of need, as well as his or her attorney or other representative. Additionally, a grand jury, taxing authority (i.e., the federal government, the state, a county, a city, a school board, etc.), a law enforcement agency, or a prosecuting attorney may obtain access to accident reports without filing a statement of need if they are acquiring the report in conjunction with an ongoing administrative, criminal, or tax investigation.¹⁸⁴

FAQ

Should the names, addresses, telephone numbers, and drivers' licenses be redacted when responding to an open records request for accident reports?

Only when the need for the accident report is for public interest research must this information be redacted from the accident report. However, if the accident report contains an individual's day and month of birth, it must be redacted.¹⁸⁵

May accident reports ever be obtained in bulk?

Accident reports may only be obtained in bulk if the person requesting the accident reports is authorized to have access to each and every accident report requested and files a written statement of need for each and every accident report requested.

May a newspaper reporter obtain copies of the reports for all accidents occurring during a 30-day period?

Yes. As long as the reporter files a written statement of need for each report stating that the request is on behalf of a news media, the reports may be made available in bulk.

Records Disclosing the Location of Certain Historic Properties

Public disclosure is not required for records that disclose the location of certain historic properties if the Division of Historic Preservation of the Department of Natural Resources (DNR) has determined that disclosure will create a substantial risk of harm, theft, or destruction to the property, or the area or place where the property is located.¹⁸⁶ DNR maintains an inventory and register relating to the location and character of historic property as defined by law.¹⁸⁷

FAQ

If the local archeological society requests information from the county parks department that identifies sites in a county park where Indian pottery shards or arrowheads may be found, what should the parks department do?

Before releasing the location of such a site, the parks and recreation department should contact the Historic Preservation Division of the DNR to determine whether the site is on a historic property the location of which must be kept confidential in order to remain a historical resource.

185 See O.C.G.A. § 50-18-72(a)(20).

186 O.C.G.A. § 50-18-72(a)(14).

187 O.C.G.A. §§ 12-3-50.1 and 12-3-50.2.

Records Disclosing the Location of Rare Plants and Animals

Public disclosure is not required for records that contain site-specific information on the locations of rare species of plants or animals or sensitive natural habitats on public or private property if the DNR determines disclosure will create a substantial risk of harm, theft, or destruction to those species or habitats, or the areas where they are located. However, the owners of private property where rare species or sensitive natural habitats are located are entitled to this information if requested.¹⁸⁸

FAQ

If a county's parks department receives a request for documents that identify the location of Pink Ladyslipper plants growing in a county park, must the department release the documents?

No. Pink Ladyslipper is on the list of plants, maintained by DNR's Georgia Natural Heritage Program, the location of which must be kept confidential to prevent commercial exploitation of the plant. Whenever the county receives an open records request for records that would identify the location of certain plants or animals, the Georgia Natural Heritage Program should be consulted to ensure that the plants or animals are not on the list of species in danger of being destroyed.

Burglar Alarm, Fire Alarm, and Security System Information

Public disclosure is not required for records that reveal the names, home addresses, telephone numbers, security codes, e-mail address, or any other data or information developed, collected, or received by counties in connection with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems.¹⁸⁹

FAQ

If the county provides security systems for a fee to its citizens, is it required to release the personal information of those who subscribe to the service?

No. The county does not have to release the names, home addresses, telephone numbers, security codes, or e-mail address of customers of the county's security system.

Neighborhood Watch and Public Safety Notification Programs

Public disclosure is not required for records that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with a neighborhood watch or public safety notification program.¹⁹⁰

¹⁸⁸ O.C.G.A. § 50-18-72(a)(18).

¹⁸⁹ O.C.G.A. § 50-18-72(a)(19).

¹⁹⁰ Id.

FAQ

If the county receives a request to release the e-mail addresses of the recipients of its public safety notification program newsletter for the purpose of disseminating campaign information, does the county have to release this information?

No. The county does not have to release the e-mail addresses of the recipients of the public safety notification program to anyone for any purpose.

Records Containing Information About Rideshare Participants

Public disclosure is not required for records acquired by a county to establish, implement, or assist in the establishment or implementation of a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, providing transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting.¹⁹¹

FAQ

Is the county required to provide information about rideshare participants?

No. The records of anyone participating in or anyone expressing an interest in participating in a carpool or rideshare program may be kept confidential.

Records That Could Compromise Public Security

Public disclosure is not required for records that, if disclosed, could compromise security of the public against sabotage, criminal, or terrorist acts. This exemption applies to records that must be kept confidential in order to protect life, safety, or public property.¹⁹² Exempt records include

- security plans and vulnerability assessments for public utilities, technology infrastructure, building, facility, or function (in effect at the time of the request for disclosure) or pertaining to a plan or assessment in effect at such time;
- security plans and vulnerability assessments for deployment of surveillance strategies, actions required by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protections, 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 (in effect at the time of the request for disclosure or pertaining a plan or assessment in effect at such time);

¹⁹¹ O.C.G.A. § 50-18-72(a)(24).

¹⁹² O.C.G.A. § 50-18-72(a)(25).

- plans for protection against terrorist or other attacks that depend for effectiveness in whole or in part upon a lack of general public knowledge of the plans' details;
- documents relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for effectiveness in whole or in part upon a lack of general public knowledge of the documents;
- plans, blueprints, or other materials that—if made public—could compromise security against sabotage, criminal, or terroristic acts; and
- records of any government-sponsored and related training program on security measures, which would identify trainees or instructors or reveal the information described above.

If litigation challenging nondisclosure of these records occurs, the court may review the documents in question in camera. The judge may allow disclosure to be conditioned, in writing, upon measures the court may find to be necessary to protect against endangerment of life, safety, or public property.¹⁹³

FAQ

What types of records may be kept confidential in order to protect the public from potential sabotage or terroristic acts?

Generally, the public may be denied access to the following records:

- Security plans and vulnerability assessments for public buildings, utilities, technology infrastructure, and other public functions or activities (including contingency plans for meetings, motorcades, dignitary protection, after-action reports, and similar documents)
- Plans for protection against terrorist attacks
- Documents relating to the existence or location of security devices
- Plans and blueprints which, if made public, could compromise security
- Government sponsored security training programs that contain the above referenced content or identify trainees and instructors¹⁹⁴

Are security plans ever required to be released?

A requestor may file a lawsuit challenging the denial of access to a security plan. The judge could review the security plan and decide whether it may be released. If the judge determines that the record may be released, he or she may place conditions on the release of the records to protect against the endangerment of life, safety, or public property. The conditions must be in writing.

193 Id.

194 Id.

Written Records and Recordings of 9-1-1 Calls

Public disclosure is not required for portions of 9-1-1 records and tapes that would reveal the name, address, or telephone number of callers to 9-1-1 centers if revealing that information could put the caller at risk or disclose the identity of a confidential source, unless the request is made by a defendant in a criminal case.¹⁹⁵

Public disclosure is also not required for audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress, extreme cries of a caller who died during the call, or the speech or cries of a person who was a minor at the time of the call, except by

- a representative of the deceased caller's estate;
- the parent or legal guardian if the caller is a minor;
- an accused in a criminal case if there is a good faith belief that the recording is relevant to the criminal action;
- a party to a civil action who in good faith believes that the recording is relevant to a civil case;
- attorneys for the parties previously noted; or
- an attorney for a person who may pursue a civil action.

The person seeking the audio recording of a 9-1-1 telephone call must submit a sworn affidavit that attests to the facts necessary to establish eligibility to receive the record.¹⁹⁶

FAQ

If a caller to a 9-1-1 center reports wrongdoing, may the perpetrator or some other person file an open records request to find out who reported him or her?

The name, address, and telephone number of a citizen placing a call to an emergency 9-1-1 center may be redacted from any records, written or recorded, when an open records request is filed. This is aimed at preventing retribution against a person who sees wrongdoing and properly reports it to law enforcement authorities through the 9-1-1 call center. Without this exemption, a perpetrator could obtain the identity of the caller by filing an open records request.

If a newspaper is researching an article on slow response times to requests for assistance when a 9-1-1 call is placed, may recordings and other records be withheld that might provide a basis for criticism?

No. Except for the identifying information of callers to 9-1-1 who might be at risk and certain distressed speech calls, records of a 9-1-1 call center are subject to disclosure like the records of any other public agency.

¹⁹⁵ O.C.G.A. § 50-18-72(a)(26).

¹⁹⁶ O.C.G.A. § 50-18-72(a)(26.1).

Audio and Video Recordings

Public disclosure is not required for audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation, except to

- an appointed representative of a deceased's estate when the decedent was depicted or heard on such recording;
- a parent or legal guardian of a minor depicted or heard on such recording;
- an accused in a criminal case who in good faith believes the recording is relevant to his or her criminal proceeding;
- a party to a civil action who in good faith believes the recording is relevant to the civil action;
- attorneys for any of the previously mentioned parties; or
- an attorney representing a client who may pursue a civil action.

Any person seeking the audio or video recording is required to submit a sworn affidavit that attests to the facts necessary to establish eligibility to receive the records under the law.¹⁹⁷

Applications for Licenses to Possess Firearms

Public disclosure is not required for any permanent records maintained by a probate judge, pursuant to O.C.G.A. § 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. Law enforcement agencies and probate judges, however, are not precluded from obtaining records relating to licensing and possession of firearms as provided by law.¹⁹⁸

FAQ

Should a probate judge allow a newspaper to review an application for a license to carry a pistol?

No. Law enforcement officers, however, cannot be denied access to those records.

Records Subject to Attorney-Client Privilege

Public disclosure is not required for records containing communications subject to the attorney-client privilege recognized by state law, including legal conclusions. However, this exemption does not apply to factual findings of an attorney conducting an investigation on behalf of a county, as long as the 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 county or any officer or employee.

¹⁹⁷ O.C.G.A. § 50-18-72(a)(26.2).

¹⁹⁸ O.C.G.A. § 50-18-72(a)(40).

Investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies are exempt from disclosure if these investigations are otherwise subject to the attorney-client privilege.

Attorney-client communications, however, may be obtained in a legal proceeding¹⁹⁹ to prove justification (or lack thereof) in refusing disclosure of documents for the exemption. However, the judge of the court where the proceeding is pending must first determine (by an in camera examination) that disclosure would be relevant on that issue. In addition, when a county withholds information subject to this exemption, any party authorized to bring a proceeding under O.C.G.A. § 50-18-73 may request that the judge of the court where the proceeding is pending determine (by an in camera examination) if the information was properly withheld.²⁰⁰

FAQ

How does a county clerk know which documents are confidential pursuant to the attorney-client privilege?

The county attorney should be consulted if the clerk believes that a particular document may be subject to the attorney-client privilege.

May a county attorney refuse to disclose a bill submitted to the county for legal services?

No. Billing records do not fall within the attorney-client privilege exemption.

Is the county attorney's e-mail to the board of commissioners informing them of the time and location of an upcoming meeting an open record?

While this may be a communication between attorney and client, if it does not involve pending or potential litigation or claims, then an e-mail with factual information would be an open record.

Is the county attorney's e-mail outlining the county's potential liability in a particular situation an open record?

No. This e-mail would be exempt from disclosure under the attorney-client privilege, as it would pertain to potential litigation or claims.

Does correspondence between an attorney and client regarding a proposed settlement become subject to production under the open records law once the matter is settled?

No. The attorney-client relationship survives the end of the representation and even the relationship, unless explicitly waived by the client.²⁰¹

199 O.C.G.A. § 50-18-73.

200 O.C.G.A. § 50-18-72(a)(41).

201 O.C.G.A. §§ 24-5-501(a)(2) and 50-18-72(a)(41).

Attorney Work Product Records

Public disclosure is not required for records that are considered confidential attorney work product. Disclosure is not required for legal conclusions of the attorney, but it is required for factual findings of an attorney conducting an investigation on behalf of a county if the 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 county or any officer or employee.

Investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies must be exempt from disclosure if these investigations are otherwise subject to confidentiality as attorney work product.

In addition, when a county withholds information based on this exemption, any party authorized to bring a proceeding under O.C.G.A. § 50-18-73 may request that the judge of the court where the proceeding is pending determine (by an in camera examination) if the information was properly withheld.²⁰²

FAQ

Does the county attorney's research and evaluation of a harassment claim against the county have to be released?

No. Most likely, such records would be protected under the attorney work product exception to the open records law.

Does a claims adjuster in a county's risk management department have to release reports and evaluations of accidents involving county vehicles?

No. Claims adjusters are not required to release such information on claims involving motor vehicle accidents.²⁰³

Does a claims adjuster in a county's risk management department have to release reports and evaluations of claims involving an injury to a citizen who slipped and fell in the courthouse?

The county attorney should be consulted to determine whether the report or evaluation falls within the attorney-client or attorney work product exemption. The open records exemption contained in O.C.G.A. § 36-92-4(c) only applies to claims involving motor vehicles owned by the county.

Records Related to County Liability and Self-Insurance

Public disclosure is not required for records pertaining to the rating plans or systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to a county.²⁰⁴

202 O.C.G.A. § 50-18-72(a)(42).

203 O.C.G.A. § 36-92-4(c).

204 O.C.G.A. § 50-18-72(a)(45).

FAQ

Do the underwriting rules used to write the county's insurance plan have to be released?

No. The underwriting rules are considered proprietary information and are not required to be released.

Does the county have to release records that the actuarial report used to determine the cost of providing certain benefits in its self-insurance program?

No. These records would likely be considered a proprietary statistical plan that is not required to be released.

EXEMPT RECORDS: PUBLIC ACCESS MAY BE WITHHELD TEMPORARILY

The following types of records may be kept confidential for a limited amount of time, but ultimately must be released.

Records of Pending Investigation of Law Enforcement, Prosecution, or Regulatory Agencies

Public disclosure is not required for records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, except that initial police arrest reports and initial incident reports must be released. Once all direct litigation involving an investigation or prosecution is final, or otherwise terminated, the records must be released. This exemption also does not apply to records in the possession of a county that is the subject of the pending investigation or prosecution.²⁰⁵

FAQ

May initial arrest reports be withheld?

No. Initial arrest reports must be released under the open records law.

What if the initial arrest report contains information that identifies the name of a rape victim?

Any information that identifies the rape victim may not be disclosed.²⁰⁶ If an initial arrest report contains identifying information, then such information should be redacted prior to release of the report.

Should a county disclose records regarding a pending investigation or prosecution of a violation of a county regulatory ordinance, such as its soil erosion and sedimentation control ordinance?

The open records statute does not address this subject directly. However, since the county is acting in a regulatory capacity when it enforces soil erosion and sedimentation control or other regulatory ordinances, it is reasonable to assume that documents, other than the initial report, need not be disclosed under the open records law before either the investigation or prosecution has become final or has been terminated.

²⁰⁵ O.C.G.A. § 50-18-72(a)(4).

²⁰⁶ O.C.G.A. § 16-6-23.

Records of Personnel Investigations

Public disclosure is not required for records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until 10 days after the same has been presented to the county or an officer for action, or the investigation is otherwise concluded or terminated. However, this exemption should not be interpreted to make these investigatory records privileged.²⁰⁷

FAQ

If a county employee is terminated for misconduct on the job, does the county have to release the evidence and documents considered during the investigation?

Yes. However, the county does not have to release the documents until 10 days after the investigation has been completed.

If a department head is investigated for, but later cleared of, sexually harassing an employee, must the county release the documents used in the investigation and the name of the employee who reported the incident if requested by the local newspaper?

Yes. The documents used in the investigation, including the name of the employee who was allegedly harassed, become public records 10 days after the investigation has been completed.

Are criminal conviction records of prospective employees of the county fire department open records?

No. Criminal conviction data obtained by the fire chief from the Georgia Crime Information Center are not public records.²⁰⁸

Records about Future or Potential County Purchase of Real Estate

Public disclosure is not required for real estate appraisals, engineering, or feasibility estimates or other records made for or by the county relative to the acquisition of real property until the property has been acquired or the proposed transaction has been terminated or abandoned.²⁰⁹

207 O.C.G.A. § 50-18-72(a)(8).

208 O.C.G.A. § 25-4-8(c)(1).

209 O.C.G.A. § 50-18-72(a)(9).

FAQ

If a county obtains a real estate appraisal or environmental study on a parcel of land that the commissioners are considering purchasing, must it release the documents to the seller of the property under the open records law, if requested? What if the newspaper requests the documents?

Regardless of who makes the request, the county does not have to release the documents until the property is purchased or the board of commissioners decides not to purchase the property. The exemption applies to engineering, feasibility estimates, and other records created in conjunction with the acquisition.

If a county obtains an appraisal on road equipment or a computer system, should the appraisal be disclosed if requested by another vendor of the same product?

Yes. Unlike acquisition of real property, appraisals and studies on personal property and equipment obtained by the board of commissioners are open records subject to disclosure.

If a county decides to sell a county administration building and obtains a real estate appraisal to determine its value, should the appraisal be released to interested purchasers who make an open records request?

Yes. There is no exception for appraisals obtained for the sale of real property by the county.

Pending Bids and Proposals

Public disclosure is not required for pending, rejected, or deferred sealed bids or sealed proposals and related detailed cost estimates until the final award of the contract is made, the project is terminated or abandoned, or the county takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.²¹⁰

FAQ

If a county receives an open records request by a prospective bidder to review bids submitted by other vendors prior to the date of the bid opening, should this information be released?

No. The contents of the bids do not have to be released until the board of commissioners votes to award the bid (or to reject all bids).

Does a county have to release proposals received for construction of a new jail?

Proposals received on construction do not have to be released until the county awards the project or the project is terminated.²¹¹

May a board of commissioners keep a contract confidential until it is signed?

No. There is no language in the law that authorizes a county to withhold a proposed or unexecuted contract from public view unless it has been sealed.

²¹⁰ O.C.G.A. § 50-18-72(a)(10).

²¹¹ See generally, O.C.G.A. § 36-91-21(c)(1)(B).

Records Identifying Applicants for County Manager/Administrator and Other Executive Agency Heads

Public disclosure is not required for records identifying individuals applying for, or under consideration for, employment or appointment as executive head of a county or agency. However, at least 14 calendar days prior to the meeting where the final action or vote will be taken on the position of executive head, all documents concerning the three best-qualified applicants under consideration must be available for inspection and copying.

If a county has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with the open meetings law, then it is not required to delay final action on the position.

The county is not required to release records of other applicants or persons under consideration, except at the request of that person. Upon request, the county must furnish the number of applicants and the composition of the list by such factors as race and sex. The county is not allowed to avoid these requirements by the employment of a private person or agency to assist with the search or application process.²¹³

To best illustrate how this exemption works in practice, the following outlines procedures a county should follow to hire a new county manager:

- In hiring a county manager, the county can elect to (1) conduct the hiring process in a confidential manner or (2) conduct the hiring process in the open.
- If the county decides to conduct the hiring process in a confidential manner, it may cloak the identity of the applicants for the vacant position. Generally, this is done to protect applicants from retribution from current employers. Pursuant to an exception in the open meetings law,²¹⁴ the board of commissioners may interview candidates in executive session. Once the board has identified up to three of the best-qualified applicants under serious consideration, it must inform these applicants that their names will be publicly released if they choose to continue to seek the position. Any of the applicants may decline to have their names publicly released. However, doing so bars them from pursuing the position any longer. The board must then wait 14 days after releasing the names of the finalists to the public before making a final decision to hire one of the finalists. If the board hires a manager at the expiration of that 14-day period, it must be from the list of candidates released to the public. The county cannot hire one of the applicants whose records were withheld from the public.

TERMINOLOGY

Any executive head of an agency is covered by this part of the open records law. Although the term “executive head” is not defined in the law, the position of county manager, county administrator, department head, development authority director, and similar positions would clearly be subject to the requirements of this exemption. Note that the term “agency” includes every county department, agency, board, bureau, office, commission, authority, or similar body.²¹² Therefore, the provisions may also apply if the county has an executive head of any of these county agencies.

212 See O.C.G.A. §§ 50-14-1(a)(1)(C) and 50-18-70(b)(1).

213 O.C.G.A. § 50-18-72(a)(11).

214 O.C.G.A. § 50-14-3(b)(2).

- Alternatively, a county can conduct the hiring process in public and make all records available to the public for all of the candidates. If that is the case, there is no need to wait 14 days to make a hiring decision and the county can choose from any of the candidates that applied rather than just the top three.
- Regardless of which procedure is used, the county must keep a record of the number of applicants and the composition of the list by such factors as race and sex. This record must be disclosed upon request.

FAQ

If there is only one applicant for the position of county manager and the board of commissioners would like to hire him or her, must the board wait 14 days to make the final decision?

If the name of the applicant was not made public during the application process and the board interviewed the candidate in executive session, then the board must wait 14 days to hire the applicant (assuming that he or she decides to continue to seek the position after being notified that the board must release his or her name). If the application and interview processes were conducted entirely in public, then the county would not have to wait the 14 days.

If the names of all of the applicants for county manager are available to the public, but are never requested, must the board of commissioners still wait 14 days to make the final decision?

As long as the hiring process was always open to the public (i.e., without conducting interviews or discussing or deliberating in executive session), then the county does not have to wait 14 days merely because no citizens or newspaper requested the names of the applicants.

What if the board of commissioners has more than three qualified candidates for the position of county manager who are being seriously considered?

While the board is only required to release the names of up to three candidates, it may release the names of additional finalists.

What if the board of commissioners only has 2 qualified candidates out of 10 applications that it is considering for the position?

The board is only required to release the names of up to three qualified candidates. The board is not required to include the name of any individual who is not be seriously considered as a candidate merely to provide three names.

What happens if, after the expiration of the 14-day waiting period, the board of commissioners does not want to hire any of the three finalists whose names were publicly released?

The board does not have to hire any of the three finalists. If there are other applicants who did not initially make the final top three, then the board must recommence the process of selecting finalists, receiving permission to release the names, and waiting 14 days. Alternatively, the board can recommence the hiring process in an open manner.

FAQ

Should any information be released about the other applicants for county manager?

The number, sex, and race of all of the applicants must be released if the information is requested by the press or an individual. Note, however, that any applicant can request that records pertaining to his or her candidacy be released, in which case the county must make them public along with the top three candidates' records.

If a board of commissioners hires a private employment agency to receive resumes and screen candidates, can it avoid the requirements of the open records law?

No.

Records with Historical Research Value

Public disclosure is not required for records having historical research value that 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 the 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 does not apply to any records prepared in the course of the operation of the state or local governments.²¹⁵

FAQ

If a resident donates correspondence and records of a historical nature on the condition that the documents not be made public until after his or her death, should the county library release the documents under the open records law, if requested?

If the documents have historical research value and were not prepared in the course of the operation of government (i.e., they are not commission meeting minutes, deed records, warrants, county official correspondence, etc.), then the county library may honor the donor's request and not release the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale.

If the grandchild of a former county clerk donates commission minutes from the 1930s to the county, should the county observe the grandchild's request to keep the minutes confidential?

No. Because the records relate to the operation of county government, they must be released.

MISCELLANEOUS EXEMPTIONS

THE GENERAL ASSEMBLY

Public disclosure is not required for records that are 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. This exception does not apply to records related to the staff services provided to any committee or subcommittee or to any records that are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly.²¹⁶

RECORDS CONTAINING FARM WATER USE

Public disclosure is not required for records of farm water use by individual farms as determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105. However, 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 are subject to disclosure.²¹⁷

RESEARCH BY INSTITUTIONS OF HIGHER EDUCATION

Public disclosure is not required for 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 activities of a higher education institution in 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 exemption applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works.²¹⁸

PUBLIC EDUCATION TESTING MATERIALS/ATHLETIC ASSOCIATIONS

Unless otherwise provided by law, public disclosure is not required for records that derive value from being unknown to the test taker (i.e. questions, scoring keys, and other materials needed to create a test) prior to administration of the test by an agency.

This includes, but is 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. Reasonable measures must be taken by the owner of the test to protect security and confidentiality. 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 a test. These limitations do not include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.²¹⁹

²¹⁶ O.C.G.A. § 50-18-72(a)(12).

²¹⁷ O.C.G.A. § 50-18-72(a)(15).

²¹⁸ O.C.G.A. § 50-18-72(a)(36).

²¹⁹ O.C.G.A. § 50-18-72(a)(38). While intercollegiate athletic records are not exempt from disclosure, the timeframe for which they must be disclosed is within 90 days after the request has been made.

STATE HEALTH DEPARTMENTS AND HIGHER EDUCATION RESEARCH PARTICIPANTS

Public disclosure is not required for 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.²²⁰

OFFICE OF LEGISLATIVE COUNSEL

Communications between the Office of Legislative Counsel and members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of these public officers is privileged and confidential. In addition, these communications—and records and work product relating to these communications—are not subject to inspection or disclosure under the open records law or any other law or under judicial process. However, this privilege does not apply where it is waived by the affected public officer or officers. This privilege is in addition to any other constitutional, statutory, or common law privilege.²²¹

ENFORCEMENT OF THE OPEN RECORDS LAW

Failure to properly release public records can result in a civil action and a criminal action being filed by the Attorney General or a private person.

FILING AN ACTION TO ENFORCE THE OPEN RECORDS LAW

Superior courts have jurisdiction over actions against persons or agencies having custody of records open to the public to enforce compliance with the open records law in law or in equity. Actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General has the authority to bring actions, at his or her discretion, as may be appropriate to enforce compliance with the open records law and to seek either civil or criminal penalties or both.²²²

An action may be brought against a county official after express refusal to respond to an open records request has occurred or, in the event of failing to respond to a request, after the three-day time period for response has passed. Unlike the open meetings law, there is no specific deadline for filing a challenge to an alleged open records law violation. In general, non-criminal claims against the county must be brought within one year²²³ and misdemeanor charges may be brought at any time within two years of the violation.²²⁴

220 O.C.G.A. § 50-18-72(a)(39).

221 O.C.G.A. § 50-18-75.

222 O.C.G.A. § 50-18-73(a).

223 O.C.G.A. § 36-11-1.

224 O.C.G.A. § 17-3-1(e).

FAQ

What happens if the records custodian or other person with custody of county records refuses to give access to requested records in a timely manner?

A criminal or a civil action may be filed in superior court against the records custodian or the county.

May a county clerk or other employee be sued for an open records violation?

Yes. If the county clerk or any other employee that has custody of requested records and knowingly and willfully fails or refuses to provide access to those records or frustrates or attempts to frustrate access to records, then a criminal action may be brought against the county clerk, as well as the county.

Who may bring legal action to enforce the open records law?

An action may be brought by the Attorney General, the district attorney, or a private person in the superior court of the county where the alleged violation takes place. Oftentimes, a newspaper or other media outlet will initiate the complaint.

May the county be sued in magistrate court for an open records violation?

No. Actions for alleged open records law violations may only be brought in the superior court. They may not be brought in municipal court, magistrate court, probate court, state court, or any other lower court.

May a superior court judge issue an injunction requiring the county to provide records under the open records law?

The law gives the superior court jurisdiction “in equity,” which means that remedies such as injunctions may be obtained.

CRIMINAL PROSECUTION OF OPEN RECORDS LAW VIOLATIONS

A person alleging a violation of the open records law may ask a judge of the superior, state, or probate court to issue a citation in the same manner that an arrest warrant for a peace custodian is issued.²²⁵ The records custodian or other defendant named in the case may not be arrested before trial. However, 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.²²⁶

225 See O.C.G.A. § 17-4-40.

226 O.C.G.A. § 50-18-74(b).

FAQ

How is an open records law violation prosecuted?

A hearing before the judge of the superior court, state court, or probate court must be held to determine whether a citation for a violation of the open records law should be issued against the records custodian.²²⁷ The hearing may be requested by the Attorney General, the district attorney, the solicitor, or any other individual or party alleging a violation of the open records law. If the citation is issued, it will be personally served on the records custodian.

At least five days before the arraignment, the court clerk will mail a notice of the arraignment date to the records clerk and his or her attorney, if any.²²⁸ At the arraignment, the charge against the records custodian will be read and the records custodian must enter a plea of guilty, not guilty, or nolo contendere. A plea of nolo contendere means that the records custodian does not dispute the truth of the charges against him or her.²²⁹ Although it is neither a plea of guilt or innocence, it has a similar effect as a plea of guilty. If the records custodian enters a plea of guilty or nolo contendere, the judge may impose a fine of up to \$1,000 for a first offense (or \$2,500 for a subsequent offense within a one-year period). If the records custodian enters a plea of not guilty, then the case will go to trial.

Will a county clerk be arrested if he or she fails to comply with the open records law?

The court may issue an arrest warrant only if the county clerk fails to attend the arraignment or trial.

CRIMINAL PENALTY FOR OPEN RECORDS LAW VIOLATIONS

It is a misdemeanor for a records custodian, county official, any other person, or entity to violate the open records law by knowingly and willfully

- failing or refusing to provide access to records not subject to an open records exemption;
- failing or refusing to provide access to public records within the time limits established by law; or
- frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review.

Conviction of an open records law is punishable by a fine up to \$1,000 for the first violation.

Conviction of additional open records law violations with a 12-month period may result in a criminal fine up to \$2,500.

In addition, county employees or officials that destroy records for the purpose of preventing their disclosure may be subject to prosecution as a felony punishable by imprisonment of 2 to 10 years.²³⁰

It is a defense to any criminal action under the open records law that a person has acted in good faith in his or her actions.²³¹

227 See O.C.G.A. §§ 17-4-40(c) and 50-18-74(b).

228 O.C.G.A. § 17-7-91.

229 See O.C.G.A. § 17-7-95.

230 See O.C.G.A. §§ 45-11-1(a) and 50-18-74(a).

231 O.C.G.A. § 50-18-74(a).

FAQ

Are there criminal penalties for violations of the open records law?

Yes. Failure to comply with the open records law is a misdemeanor.²³² Additionally, elections superintendents who willfully refuse to allow public inspection of certain records in their custody may be found guilty of a misdemeanor.²³³ Furthermore, the failure to release materials, such as field cards, containing information gathered by the personnel of the board of tax assessors is a misdemeanor.²³⁴

What happens if the records custodian refuses to release public documents or refuses to allow a citizen to review public documents?

If the judge determines that the failure to provide available documents within three business days is knowingly and willfully done, then the records custodian may be found guilty of a misdemeanor and charged a \$1,000 fine.

If a records custodian was fined for violating the open records law and is convicted of a second violation six months later, how much can the custodian be fined?

The law allows for a fine of up to \$1,000 for the first fine and additional fines of up to \$2,500 for each additional violation made within a 12-month period from the date the first penalty was imposed.

What happens if the records custodian destroys records so that they do not have to be turned over to the person making the request?

Records custodians who destroy records for the purpose of preventing their disclosure can be prosecuted for a felony punishable by 2 to 10 years in a state prison.²³⁵ This does not apply to records custodians who are destroying records in accordance with a properly approved record retention schedule.

CIVIL PENALTY FOR OPEN RECORDS LAW VIOLATIONS

A civil penalty may be imposed by the court in any civil action brought against any person who negligently violates the open records law in an amount not to exceed \$1,000 for the first violation. A civil penalty not to exceed \$2,500 per violation per person may be imposed for each additional violation committed within a 12-month period from the date the first penalty or fine was imposed.²³⁶

232 Id.

233 O.C.G.A. § 21-2-585(a).

234 O.C.G.A. § 48-5-314(a)(3).

235 O.C.G.A. § 45-11-1.

236 O.C.G.A. § 50-18-74(a).

FAQ

What are the different penalties and possible results of violating the open records law?

Officials who illegally withhold public records may be found guilty of a misdemeanor punishable by a \$1,000 fine, as well as a civil penalty up to \$1,000. If records are destroyed in order to prevent disclosure, it is a felony with a sentence of 2 to 10 years.

DEFENSE AGAINST LAWSUIT FOR RELEASING INFORMATION UNDER THE OPEN RECORDS LAW

Any county, agency, or person who provides access to information in good faith reliance on the requirements of the open records law will not be held liable in any action on account of that decision.²³⁷

FAQ

Can a county clerk be sued for providing requested information that should have been kept confidential?

While a lawsuit may be filed, if the judge finds that the county clerk in good faith believed that he or she was required to provide the information under the open records law, then the clerk will not be liable.

COURT COSTS AND ATTORNEYS' FEES

In any action brought to enforce the open records law, if the court determines that either party acted without substantial justification by not complying with the law or in introducing the litigation, the court must award attorneys' fees and other reasonably incurred litigation costs in favor of the complaining party, unless it finds that special circumstances exist. Whether the position of the complaining party was substantially justified must 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.²³⁸

²³⁷ O.C.G.A. § 50-18-73(c).

²³⁸ O.C.G.A. § 50-18-73(b).

FAQ

Who pays for the legal defense of a county records custodian sued or prosecuted for an open records law violation?

As with other lawsuits filed against county officials or employees, the board of commissioners is authorized to cover the cost of defending lawsuits.²³⁹ Additionally, the defense of these cases may be covered by the county's insurance policies, if any.

Does the county have to pay attorneys' fees awarded to someone who files an open records lawsuit?

In order for an individual to obtain attorneys' fees from the county, there is a two-prong test. First, the plaintiff must show that the records custodian or county violated the open records law by not producing the requested records in a timely fashion. Second, it must be shown that the county lacked substantial justification for violating the open records law. For instance, the county may not have provided public records within three days because the courthouse was flooded. The court would likely find that the county had substantial justification for failing to comply and would not make the county pay the other party's attorneys' fees.

What can county officials do to avoid paying attorneys' fees to the plaintiff in an open records law challenge?

The records custodian should be very thorough when reviewing the records responsive to the request and very accurate when identifying the legal authority for an exemption. If there is any question as to whether a record should be disclosed or the legal authority for an exemption, the records custodian should consult with the county attorney. If the records custodian follows the advice of the county attorney, the judge may be more likely to find that the county acted with justification in refusing to release a document.

Can a county get the opposing party to pay the county's attorneys' fees if the county wins an open records challenge in superior court?

Yes. Unlike open meetings law challenges, the judge may order the plaintiff to pay the county's attorneys' fees if the plaintiff acted without substantial justification to bringing a lawsuit against the county challenging the denial of a record.



Resources

Open Meetings Model Forms

Model Executive Session Affidavits

(A copy of the affidavit must be filed with the minutes of the open meeting.)

STATE OF GEORGIA
 COUNTY OF _____

AFFIDAVIT OF PRESIDING OFFICER

_____, Chair of the _____ County Board of Commissioners, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1.

The _____ County Board of Commissioners met in a duly advertised meeting on _____, _____.

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 county attorney or other legal counsel to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. § 50-14-2(1)

_____ Discussion of tax matters made confidential by state law as provided by O.C.G.A. § 50-14-2(2) and (*insert the citation to the legal authority making the tax matter confidential*) _____

_____ Discussion or voting on

_____ Authorizing a settlement as provided in O.C.G.A. § 50-14-3(b)(1)(A)

_____ Authorizing negotiations to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(B)

_____ Authorizing an appraisal as provided in O.C.G.A. § 50-14-3(b)(1)(C)

_____ Entering a contract for the purchase, disposal of, or lease of property as provided in O.C.G.A. § 50-14-3(b)(1)(D)

_____ Entering into an option to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(E)

_____ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. § 50-14-3(b)(2)

____ Interviewing candidates for executive positions as provided in O.C.G.A. § 50-14-3(b)(2)

____ Other (describe the exemption to the open meetings law): _____
_____ as provided in (insert the citation to the
legal authority exempting the topic) _____

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 attempts 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 _____, _____.

Chair

County Board of Commissioners

Sworn to and subscribed before me this ____ day of

_____, _____.

Notary Public

My commission expires:

STATE OF GEORGIA
 COUNTY OF _____

AFFIDAVIT OF ATTENDING MEMBERS

_____, Member of the _____ County Board of Commissioners, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1.

The _____ County Board of Commissioners met in a duly advertised meeting on _____, _____.

2.

During such meeting, the Board voted to go into closed 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 county attorney or other legal counsel to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. § 50-14-2(1)

_____ Discussion of tax matters made confidential by state law as provided by O.C.G.A. § 50-14-2(2) and (*insert the citation to the legal authority making the tax matter confidential*) _____

_____ Discussion or voting on

_____ Authorizing a settlement as provided in O.C.G.A. § 50-14-3(b)(1)(A)

_____ Authorizing negotiations to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(B)

_____ Authorizing an appraisal as provided in O.C.G.A. § 50-14-3(b)(1)(C)

_____ Entering a contract for the purchase, disposal of, or lease of property as provided in O.C.G.A. § 50-14-3(b)(1)(D)

_____ Entering into an option to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(E)

_____ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. § 50-14-3(b)(2)

_____ Interviewing candidates for executive positions as provided in O.C.G.A. § 50-14-3(b)(2)

_____ Other (describe the exemption to the open meetings law): _____

_____ as provided in (insert the citation to the legal authority exempting the topic)

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 attempts 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 in accordance with O.C.G.A. § 50-14-1(e)(2)(C) and will be filed and held for in-camera inspection only.

This _____ day of _____, _____.

Member

County Board of Commissioners

Sworn to and subscribed before me this _____ day of

_____, _____.

Notary Public

My commission expires:

Model Executive Session Minutes

STATE OF GEORGIA

COUNTY OF _____

EXECUTIVE SESSION MINUTES

_____ (month), _____ (day), _____ (year)

The _____ County Board of the Commissioners met in Executive Session this _____ day of _____, at _____ a.m./p.m. in _____ room of _____.

The following commissioners were present: _____

A quorum being present, the meeting was called to order at _____ a.m./p.m. by _____, who presided at the meeting.

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 county attorney or other legal counsel to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. § 50-14-2(1)

Details: _____

_____ Discussion of tax matters made confidential by state law, as provided by O.C.G.A. § 50-14-2(2) and (*insert the citation to the legal authority making the tax matter confidential*) _____

Details: _____

_____ Discussion or voting on

_____ Authorizing a settlement as provided in O.C.G.A. § 50-14-3(b)(1)(A)

_____ Authorizing negotiations to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(B)

_____ Authorizing an appraisal as provided in O.C.G.A. § 50-14-3(b)(1)(C)

_____ Entering a contract for the purchase, disposal of, or lease of property as provided in O.C.G.A. § 50-14-3(b)(1)(D)

_____ Entering into an option to purchase, dispose of, or lease property as provided in O.C.G.A. § 50-14-3(b)(1)(E)

Details: _____

_____ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. § 50-14-3(b)(2)

Details: _____

_____ Discussion or deliberation interviewing applicants for the position of the executive head of the county as provided in O.C.G.A. § 50-14-3(b)(2)

Details: _____

_____ Other (describe the exemption to the open meetings law): _____

_____ as provided in (insert the citation to the legal authority exempting the topic) _____

Details: _____

For any votes put forth, the motion was _____, introduced by _____
_____ and seconded by _____ with votes being

In favor:

Opposed:

Abstaining:

ADJOURNMENT

There being no further business to come before the Executive Session, and on motion duly made by _____
_____, seconded and carried by _____, the meeting was adjourned at _____
a.m./p.m.

_____,
Presiding Officer

_____,
Commissioner

_____,
Commissioner

_____,
Commissioner

_____,
Commissioner

County Clerk

Model Resolution Approving Executive Session Minutes

NOTE: The open records law is silent as to how executive session minutes are to be prepared and approved. As such, this model resolution reflects but one approach. Other approaches that may also be acceptable include, but are not limited to, having the members indicate acceptance of the executive committee minutes without a vote by signing the executive session minutes immediately prior to adjourning the session or by approving the minutes in the next executive session.

RESOLUTION OF THE _____ COUNTY BOARD OF COMMISSIONERS REGARDING REVIEW AND APPROVAL OF MINUTES OF EXECUTIVE SESSIONS

WHEREAS, O.C.G.A. § 50-14-1(e)(2)(C) states that

- (1) minutes of executive sessions shall be recorded but shall not be open to the public; and
- (2) such minutes shall specify each issue discussed in executive session and that if matters subject to the attorney-client privilege are discussed, then the fact that an attorney-client discussion occurred and its subject matter shall be identified, but the substance of the discussion need not be recorded and shall not be identified in the minutes; and
- (3) 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; and

WHEREAS, minutes may be made and records kept by the clerk of the county or a person temporarily appointed to take such minutes, so long as the minutes accurately reflect the record of the meeting.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of _____ County hereby designates the chair or the chair's designee, which may include the clerk of the county, to record minutes of an executive session of the Board of Commissioners of _____ County.

BE IT FURTHER RESOLVED that, prior to the conclusion of the executive session, all members of the Board of Commissioners attending the executive session shall review the minutes recorded.

BE IT FURTHER RESOLVED that, following the conclusion of the executive session, and upon approval of such minutes by a majority of members in an open meeting, the minutes of the executive session recorded and approved in accordance with the terms hereof and as noted on the minutes shall be transmitted to the Clerk of the _____ County Board of Commissioners to be placed in proper form, kept in a confidential file, and preserved for in-camera inspection in accordance with O.C.G.A. § 50-14-1(e)(2)(C).

This _____ day of _____, _____ by action of the _____ County Board of Commissioners.

By: _____
Chair

ATTEST: _____
County Clerk

(County Seal)

Resources

Open Records Model Forms



Model Open Records Officer Resolution

RESOLUTION OF THE _____ COUNTY BOARD OF COMMISSIONERS FOR THE PURPOSE OF NAMING AN OPEN RECORDS OFFICER, AN ALTERNATE OPEN RECORDS OFFICER AND FOR OTHER PURPOSES

WHEREAS, the provisions of the Georgia Open Records Act, the “Act” (O.C.G.A. § 50-18-70, *et seq.*), were amended by action of the Georgia General Assembly during its 2012 session; and

WHEREAS, the Act allows for the appointment of an Open Records Officer to whom all written requests for records must be made; and

WHEREAS, the Act further provides for notice of such change.

NOW, THEREFORE, pursuant to the provisions of the Act, the _____ County Board of Commissioners does hereby resolve as follows:

1. _____, _____, is designated as the Open Records Officer and _____, _____, is designated as the Alternate Records Officer to act in the Open Records Officer’s absence, both to act for _____ County and all of its related and subsidiary entities, herein the “County”;
2. The term “County and all of its related and subsidiary entities” includes the following county departments and entities:

3. All written requests for records made under the Act directed to the County shall be made to the Open Records Officer, or in his or her absence, to the alternate;
4. The Open Records Officer is directed to cause all County websites to prominently display this designation and requirement;
5. The Open Records Officer is directed to notify the _____ as the county legal organ and any other media regularly covering County matters of the content of this resolution;
6. The Open Records Officer is directed to notify all county employees and volunteers that any requests made under the Act shall be directed to the Open Records Officer or his or her alternate; and
7. This action shall be effective immediately upon the notifications to the media and the changes to the websites having been made.

Resolved this _____ day of _____, 20____, by action of the _____ County Board of Commissioners.

By: _____
Chair

ATTEST: _____
County Clerk
(County Seal)

Model Open Records Law Policy

(A similar memorandum could be sent to the constitutional officers informing them of their obligations under the open records law and encouraging them to adopt a similar policy for handling open records requests.)

To: All Department Heads and Employees
 From: _____ County Board of Commissioners
 Date: _____
 Re: _____ County Open Records Law Policy

The open records law is a state law that requires counties and other governmental agencies to provide public access to documents. It was enacted to make government more open to public scrutiny by requiring that documents and records maintained by government offices be produced for inspection and copying at any person's request. You may be criminally liable for failure to strictly comply with the requirements of this law. This memorandum is designed to alert you to your responsibilities.

GENERAL RESPONSIBILITIES UNDER THE OPEN RECORDS LAW. Whenever any individual requests copies of "public records" or requests the opportunity to review "public records," the records custodian must make the copies or allow the individual the opportunity to review the documents within three business days if the records are available and are not "exempt" from the open records law. As explained in further detail below, the records custodian may charge a "reasonable fee," on behalf of the county, for complying with this request. If the estimated "reasonable fee" is greater than \$25, then the county must provide the individual with a written estimate of the fee. However, it is a good practice to provide the estimate regardless of the estimated cost.

PUBLIC RECORDS. The most important thing to remember about the open records law is that you must assume in almost all situations that everything in your department is a public record that is subject to inspection, unless it falls within one of the specific statutory exemptions to the open records law. Public records include letters, internal memoranda, invoices, requisitions, and reports maintained by or in your department. Penciled notes, e-mails, desk diaries, agendas, calendars, rolodexes, contact lists, and telephone message slips may all be subject to disclosure. Even county records that are not physically located in your office, such as records kept in storage, archives, or at your home are open records. These may also include documents maintained by a private person or company on behalf of your department. You cannot exempt records from disclosure by asking a private company to undertake county work, to assume custody over county documents, or to conduct its own investigation or study of county activities.

Public records also include information that is not on standard paper in printed form. Maps, plats, ledgers, photographs, directories to records, information maintained on CDs, DVDs, jump drives, microfiche, tapes, and on digital data storage (such as cloud storage) as well as information stored on computers such as databases, spreadsheets, electronic files, etc., may be considered public records.

E-MAILS AND TEXT OR INSTANT MESSAGES ARE PUBLIC RECORDS. This includes any e-mails, text or instant messages (county business and personal) that you have received or sent on a county computer or county issued electronic device. Any e-mails, text or instant messages relating to county business that you may have received or sent from your personal computer or electronic device are also public records. Furthermore, records that are stored in the server for your computer network are subject to disclosure. Comments made and information provided on a social networking site such as Facebook, LinkedIn, Instagram, or Twitter that is maintained by the county would also be subject.

The key to deciding whether information is open to public inspection is asking whether it is prepared and maintained or received in the course of the operation of the county, regardless of its location or form.

DESTRUCTION OF RECORDS. You may not delete, throw away, shred, or destroy county records except in accordance with the schedule contained in the records management program adopted by the board of commissioners pursuant to O.C.G.A. § 50-18-99. The records management program explains how long each type of record must be kept. Correspondence (i.e., emails, letters, other communications, etc.) is retained based on the subject matter and the significance of the communication which may be transitory (kept for useful life), general (kept for five years or duration of the record associated with the communication if longer than five years) or administrative (permanent). For more information on the county's records management program, please contact the record management director, county clerk, or county manager.

EXEMPTIONS TO THE OPEN RECORDS LAW. Some records are exempt from the open records law and do not have to be released to the public. These exceptions are interpreted narrowly, with the presumption that the public should have access to information regarding the operation and responsibilities of counties. Because these exceptions to the rule of disclosure are to be interpreted narrowly, and because several of these have been the subject of court rulings, please consult with the county attorney immediately if you think that one or more exemptions apply to records you have been asked to make available. There are three types of exemptions: (1) records that you may not release; (2) records that you may, but are not required to, withhold; and (3) records that you may temporarily withhold, but must release in the future.

RECORDS THAT MAY NOT BE RELEASED. You are not allowed to release the records listed below. The following records have been deemed to be private and protected and you could be held liable for allowing access:

- Documents that provide cable and video service provider financial information. See O.C.G.A. § 36-76-6(d).
- Documents required to be confidential pursuant to a court order. See O.C.G.A. § 50-18-71(a).
- Documents that are specifically required by the federal government to be kept confidential. See O.C.G.A. § 50-18-72(a)(1).
- Medical records. See O.C.G.A. §§ 50-18-72(a)(2) and (20).
- Documents or portions of documents that contain information the disclosure of which would be an "invasion of personal privacy." See O.C.G.A. § 50-18-72(a)(2). An "invasion of personal privacy" is a legal term that you should not attempt to interpret. County employees should not withhold documents based on this exception without first checking with the county clerk or manager.
- Portions of documents containing any individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account and utility account, passwords and financial data, medical information or insurance data, unlisted telephone number, personal e-mail or cell phone number, day and month of birth, or information regarding public utility, television, internet, or telephone accounts held by private customers. See O.C.G.A. § 50-18-72(a)(20). Although you are generally prohibited from releasing this information, there are some limited situations where it may be released. For instance, this information may be released to other governmental officials and employees when they seek the information for administrative purposes. Similarly, information may be released for law enforcement purposes or pursuant to court order. A news media representative may receive social security number and day and month of birth if they submit a written request signed under oath that the information sought is in connection with news gathering and reporting. The month and day of birth of a deceased individual may be released.
- Portions of documents which would reveal a county or other 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, account password, financial data or information other than compensatory by the county, unlisted telephone number, or identity of the public employee's immediate family or dependents. See O.C.G.A. § 50-18-72(a)(21).

- Portions of documents maintained by recreation programs that could reveal a child's name, address, and phone number, if 12 years old or under. See O.C.G.A. § 50-18-72(a)(27).
- Documents or portions of documents that would reveal a trade secret. See O.C.G.A. § 50-18-72(a)(34).
- Documents or portions of documents that would disclose proprietary information that has not been released. See O.C.G.A. § 50-18-72(a)(35).
- Documents that are subject to the attorney-client privilege or the attorney work product confidentiality. See O.C.G.A. § 50-18-72(a)(42).
- Documents or portions of documents containing confidential tax information. See O.C.G.A. § 50-18-72(a)(43), O.C.G.A. § 48-2-15 and/or O.C.G.A. § 48-5-314(a).
- Computer programs and software. See O.C.G.A. § 50-18-72(a)(44).
- Unless otherwise permitted by law, original trial exhibits without the approval of the judge assigned to the case. However, in most cases a copy, photograph, or other reproduction of a trial exhibit is an open record. See O.C.G.A. § 50-18-72(c).
- Vital records. See O.C.G.A. §§ 50-18-76; 31-10-25; 19-7-46.1.
- Confidential evaluations relating to the appointment or hiring of a public officer or employee. See O.C.G.A. § 50-18-72(a)(7).
- Documents or portions of documents that would reveal any component in the process used to execute or adopt an electronic signature. See O.C.G.A. § 50-18-72(a)(23).

RECORDS THAT MAY BE WITHHELD. The following records may, but are not required to be, withheld. In other words, although you are not required to release the following records, they may be released.

- Documents or portions of documents compiled for law enforcement or prosecution purposes that would disclose (1) the identity of a confidential source, (2) confidential investigative or prosecution material that would endanger the life or physical safety of an individual, or (3) the existence of a confidential surveillance or investigation. See O.C.G.A. § 50-18-72(a)(3).
- Georgia Uniform Motor Vehicle Accident Reports. However, certain individuals supplying a written statement of need may be supplied with a copy, such as the parties and witnesses involved or injured in the accident (and their attorneys or other representatives), the insurance companies, a district attorney, a solicitor, a law enforcement officer, individuals with a personal, professional or business connection with a party to the accident, an individual identified in the accident report, an individual that owns or leases one of the vehicles (or other property) damaged in the accident, an individual who may be liable as a result of the accident, an individual conducting "public interest" research, a representative of a news media organization, or an attorney needing the accident report as part of a criminal case or an investigation involving the safety of a road, railroad crossing, or intersection. See O.C.G.A. § 50-18-2(a)(5).
- Documents that would reveal the location or character of a historic property that the Division of Historic Preservation of the Department of Natural Resources has determined the disclosure of which would create a substantial risk of harm, theft, or destruction to the property. See O.C.G.A. § 50-18-72(a)(14).
- Records of farm water use by individual farms determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105. See O.C.G.A. § 50-18-72(a)(15).

- Documents that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats, the disclosure of which has been determined by the Department of Natural Resources to create a substantial risk of harm, theft, or destruction to the species or habitat. See O.C.G.A. § 50-18-72(a)(18).
- Documents or portions of documents that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, and other data developed by the county in connection with servicing, maintaining, operating, selling, or leasing a burglar alarm system, fire alarm system, or other electronic security system or with a neighborhood watch or public safety notification. See O.C.G.A. § 50-18-72(a)(19).
- Documents or portions of documents that would reveal the home address, home telephone number, social security number, insurance information or medical information, or identity of immediate family member or dependent of a public employee. See O.C.G.A. § 50-18-72(a)(21).
- Documents or portions of documents that would reveal the home and work address and telephone number, as well as hours of employment, of anyone who participates in or has expressed an interest in a county rideshare or carpool program. See O.C.G.A. § 50-18-2(a)(24).
- Records that could compromise public security including vulnerability assessments, security plans, and blueprints of public facilities. See O.C.G.A. § 50-18-72(a)(25).
- Portions of records identifying callers to 9-1-1 call centers by name, address, and phone number. See O.C.G.A. § 50-18-72(a)(26).
- Audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller who is a minor or who died during the call. See O.C.G.A. § 50-18-72(a)(26.1).
- Audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation. See O.C.G.A. § 50-18-72(a)(26.2).
- Documents or portions of documents which would reveal licenses to carry pistols or revolvers. However, probate court judges and law enforcement agencies may obtain records related to licensing and possession of firearms. See O.C.G.A. § 50-18-72(a)(40).
- Documents or portions of documents that would reveal 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 a county. See O.C.G.A. § 50-18-72(a)(45).

RECORDS THAT MAY BE WITHHELD TEMPORARILY. The following records may, but are not required, to be withheld. However, if they are withheld from disclosure, they may only be held temporarily. Eventually, they must be released.

- Records of a pending investigation or prosecution of a criminal or unlawful activity by a law enforcement, prosecuting, or regulatory agency do not have to be released until the investigation is concluded. See O.C.G.A. § 50-18-72(a)(3).
- Information compiled in an investigation of a county employee or official is not required to be released until 10 days after it has been presented to the board of commissioners or other officer for action or until 10 days after the investigation is concluded. See O.C.G.A. § 50-18-72(a)(8).
- Documents or portions of documents that would reveal the location of real property (i.e., land or land and a building or other structure) that the county is considering purchasing. However, these documents must be released once the property has been purchased or the plan to purchase has been abandoned. See O.C.G.A. § 50-18-72(a)(9).

- Pending bids and proposals on public works and road construction projects must be withheld until the final award of the contract is made or until the project is terminated or abandoned. See O.C.G.A. § 50-18-72(a)(10).
- Documents that would identify individuals applying for or under consideration for employment or appointment as an executive head (i.e., a county manager, administrator, or department head) if the hiring process is not conducted in the open. See O.C.G.A. § 50-18-72(a)(11). Once the number of individuals under consideration has been narrowed down to three, the three finalists have the opportunity to withdraw their applications rather than have their names released. The names of the three finalists must be released at least 14 days before the individual is hired.
- Documents that are of historical research value and that have had a restriction of access placed upon them by the owner/donor do not have to be released until 75 years after the date of donation. See O.C.G.A. § 50-18-72(a)(13).

THE PUBLIC'S RIGHT UNDER THE OPEN RECORDS LAW. The public has the right to a personal inspection of all public records not specifically exempted from disclosure under this law. It does not matter whether they are a citizen of our county or even our state. Similarly, except for information that could lead to identity theft (i.e., social security numbers, bank account information, credit card information, mother's birth name, day and month of birth), it should not matter why they are seeking the records or how they will use the records. If it is a public record, then any individual may see it.

Anyone may also make copies of public records, for a uniform per-page charge (up to 10¢ per page), and, if the search or retrieval of the records imposes unusual administrative costs or burdens, for additional administrative charges (see below for further explanation of the fees that may be charged).

Anyone who asks for a record has the right, within three business days of the request (1) to be told whether the document is an open or "public record" or whether a document (or a portion of a document) falls within one of the "exemptions" to the open records law; (2) to be given the legal authority (by code section, subsection, and paragraph number), if all or a portion of the requested records are "exempt;" (3) to be notified of any estimated charges for complying with the request; and (4) to be given copies of the requested documents, to be given the opportunity to inspect the requested documents, or to have the requested documents e-mailed, faxed, or otherwise transmitted electronically.

While county records belong to the public, the county serves as the custodian or trustee of the records and must protect them from permanent removal or alteration by an individual member of the public. Although individuals have the right to personally inspect or copy records, they do not have the right to remove public records from the office of the records custodian. As such, the records custodian or his or her designee should supervise the inspection of the records.

REASONABLE FEES THAT MAY BE CHARGED UNDER THE OPEN RECORDS LAW. The law states that you may charge and collect a uniform copying fee not to exceed 10¢ per page for letter or legal sized documents and the actual cost for non-standard documents or electronic media. However, higher fees for certified copies or other specialized records may be charged, if authorized by law.

The law also authorizes a reasonable charge for the search, retrieval, redaction, and other direct administrative costs for complying with a request for records. The hourly charge permitted cannot exceed the salary of the lowest-paid, full-time employee who, in the discretion of the records custodian, has the necessary skill and training to fulfill the request. If such an administrative charge will be assessed and is estimated to be greater than \$25, you must provide it in writing to the individual requesting the documents within three business days of receiving the request, but before fulfilling the request. Additionally, you must use the most economical and efficient means available to comply with the request.

RECORDS CUSTODIAN. The law allows counties to designate one or more records custodians to handle open records requests. The custodian should be designated for this position by a resolution of the board of commissioners. The resolution should also specify which county departments and offices should be covered by the designated records custodian(s). Once a records custodian has been designated, the county is required to notify their legal organ and display this information in a prominent place on their website, if available. The following individuals have been designated by resolution of the board of commissioners as the records custodian and the alternate for the following departments:

Department	Records Custodian	Alternate

Any open records request received must be *immediately* forwarded to the appropriate records custodian, or if that person is unavailable, to his or her designated alternate.

HANDLING OPEN RECORDS REQUESTS. Generally, all requests for records are to be responded to within three business days. Whenever possible, this means providing electronic or hard copies of the documents to the requestor or providing access. Most requests for records should be handled at the time of request without special review.

However, when the request for records cannot be handled while the citizen is in the county office or if it appears that the request may require some searching or review, the following procedures should be followed.

1. While you cannot require that a request be made in writing (although you can direct all written requests to the designated records custodian), you may encourage the requestor to put it in writing to provide documentation of when the open records request was received, as well as help to prevent misunderstandings over the actual records being requested. A records request form is attached to this memorandum and should be offered to every person requesting records and if practicable, posted on the county website. The form may be e-mailed, faxed, or mailed to the requestor or provided to any requestor appearing in person. If the request form is not filled out by the requestor, the records custodian should note on a form what records were requested and by whom, if known. An adequate supply of forms should be on hand at all times. Additional copies may be made by the custodian or may be obtained from the county clerk.
2. Upon receipt of the request, the custodian should immediately date-stamp the request form.
3. Immediately review the request to ensure that it is addressed to the appropriate department or official. If you believe that the request may include documents held by other departments, take a copy of the request to the records custodians of those departments immediately. The three-business-day time period begins to run as soon as the records custodian receives the request, if the county has designated a records custodian. Otherwise, the time period begins when the county receives the request.
4. Within three business days of the request, determine whether the county has records that are responsive to the request. You may not destroy documents or give them to someone else to prevent releasing them. However, if such records do not exist, let the requesting party know of this fact within the three-business-day time period.

5. Within three business days of the request, provide a written estimate of any copying charges or administrative charges for retrieving the documents. This is required if the estimate is greater than \$25. However, it is a good practice to provide it any time there will be copying or administrative charges.
6. Within three business days of the request, determine whether all or any portion of the documents are subject to any of the exemptions to the open records law. If all or any portion of the requested records are exempt, provide a written notice to the individual requesting the documents of the exemption, including the exact code section, subsection and paragraph. It is extremely important that you are complete and accurate in describing a record as exempt. Do not include any exemptions that do not actually apply to the requested records. If you have any questions about whether an exemption applies, contact the county manager, county clerk, or county attorney immediately.
7. Within three business days of the request, allow the requesting party to inspect and/or copy the documents that are not exempt from the open records law. You may redact (strike through or white out) any exempt portion of the document prior to releasing it to the individual. If the records cannot be produced within this time, provide the requesting party a written description of the records and a timetable for their production.
8. You are not obligated to create documents that do not presently exist or to summarize information on a list or calculations if that has not already been created as a document or computer file. For example, you may be asked for a list of all persons delinquent in paying property taxes, but your records are maintained by street address. The appropriate response is to state that you have no document in your custody or control that contains the information requested, and that such information (e.g., delinquent taxpayers) is maintained in another way (e.g., in individual forms using street addresses). However, if the information requested is kept in a database and you can access that information by performing a search or query, then you must provide that information.
9. At all times, be courteous, professional, and prompt when handling open records requests. Remember, as county officials and employees it is one of our duties to provide access to records that belong to the public. Responding to open records requests should not be viewed as an interruption of your work—it is an important part of your work. Even when the records requestor seems adversarial, it is still your responsibility to maintain a professional and helpful attitude.
10. If practicable, post frequently requested information such as the budget, audit, minutes, and the agenda on the county website so that the public has direct access to this information. The open records law allows the county to provide this public access in lieu of providing separate copies or printouts. However, if you receive a request for data fields, you may not refuse to provide the records on the basis of this public access.
11. If you have any questions at any stage of handling an open records request, *contact the county attorney immediately*. Do not attempt to over-interpret the requirements of this policy or the open records law. If you fail to strictly adhere to all of the requirements of the open records law, you may be found guilty of a misdemeanor.

Model Open Records Request

(This form may be used to distribute to individuals requesting documents under the open records law; however, an open records request is not required to be in writing)

COUNTY OPEN RECORDS REQUEST

Pursuant to the open records law, I would like to ___ inspect and copy; or ___ obtain copies of (please check one) the following _____ County records: _____

(In order to reduce administrative and copying charges, please provide as detailed a description as possible of the records that you are requesting.)

Please check one:

___ I would like to review the documents/receive the copies within three business days of this request if the records are available; however, I understand that if the records cannot be produced within three business days, a timetable for their release will be provided to me; or

___ I do not need the documents/access within three business days, but would like to review the documents/receive the copies by _____ *(insert desired timetable)*.

I understand that, pursuant to O.C.G.A. § 50-18-71, I may be charged administrative and copying fees for the cost to search, retrieve, copy, redact, and supervise access to the requested documents. This fee represents the hourly rate of the lowest-paid, full-time employee with the necessary skill and training to respond to my request, with no charge for the first 15 minutes that it takes to respond to the request. The charge for copies is 10¢ per page for letter or legal sized documents and the actual cost for non-standard documents or electronic media; however, higher fees for certified copies or other specialized records may be charged, if provided by law. I understand that I will be asked to prepay all costs associated with retrieving the records before the request will be processed if the estimated cost for producing the records exceeds \$500, or if I have failed to pay for requested records in the past. I agree to pay all copying and/or administrative costs incurred with fulfilling my open records request.

If there are any questions about my request, I may be contacted at (___) ___ - ___ *(please insert daytime telephone number)* or by e-mail at _____ *(please insert e-mail address)*.

Sincerely,

Requestor

Date

(printed name)

(address)

FOR COUNTY USE ONLY:

Open records requests are not required to be in writing. If the requestor declines to use this records request form, fill in this form based upon the information that the requestor provided and sign below.

Date: _____ Time: _____

Name of Employee Receiving Verbal Request: _____

Signature: _____

Department: _____

Model Response to Open Records Request

WHEN DOCUMENTS ARE AVAILABLE TO BE INSPECTED, COPIED, OR PROVIDED WITHIN THREE BUSINESS DAYS

(This response should be used when an individual has requested to review, inspect, or obtain records, portions of which may be exempt, that may be made available within three business days of the request)

Date _____ *(to be sent within three business days of the request for record)*

Dear _____ *(Requestor):*

Thank you for your request to review county records and your interest in county government. I received your [verbal/written] open records law request on _____ *(insert date)* to review _____ County 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 are not required to be released pursuant to a court order issued by the _____ Court of _____ [Judicial Circuit/County] dated _____. See O.C.G.A. § 50-18-71(a).
- _____ [Portions of the/The] documents are specifically required by the federal government to be kept confidential (see O.C.G.A. § 50-18-72(a)(1) and _____). *(Insert the citation to the federal code or regulation that requires the document to be kept confidential.)*
- _____ [Portions of the/The] documents are medical records and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents contain information the disclosure of which would be an invasion of personal privacy and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents were compiled for law enforcement or prosecution purposes and would disclose (1) the identity of a confidential source, (2) confidential investigative or prosecution material that would endanger the life or physical safety of an individual, or (3) the existence of a confidential surveillance or investigation and are not required to be released. See O.C.G.A. § 50-18-72(a)(3).
- _____ [Portions of the/The] documents are records of a pending investigation or prosecution of a criminal or unlawful activity by a law enforcement, prosecuting, or regulatory agency and are not required to be released. See O.C.G.A. § 50-18-72(a)(4).
- _____ [Portions of the/The] documents are Individual Georgia Uniform Motor Vehicle Accident Reports, which may only be released to certain individuals who complete a statement of need. See O.C.G.A. § 50-18-72(a)(5).
- _____ [Portions of the/The] documents contain 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, which are not subject to disclosure. See O.C.G.A. § 50-18-72(a)(6).
- _____ [Portions of the/The] documents are confidential evaluations relating to the appointment or hiring of a public officer or employee and are not required to be released. See O.C.G.A. § 50-18-72(a)(7).

- _____ [Portions of the/The] documents contain materials of an investigation relating to the suspension or firing of, or a complaint against, a public officer or employee, which have been presented to the county or concluded for less than 10 days and are not required to be released. See O.C.G.A. § 50-18-72(a)(8).
- _____ [Portions of the/The] documents contain information relating to the acquisition of real property and are not required to be released until the property is purchased or the acquisition is abandoned. See O.C.G.A. § 50-18-72(a)(9).
- _____ [Portions of the/The] documents contain pending bids or proposals on public works or road construction projects and are not required to be released until the final award is made or the project is abandoned. See O.C.G.A. § 50-18-72(a)(10).
- _____ [Portions of the/The] documents would identify individuals applying for or under consideration for employment or appointment as an executive head and are not required to be released until up to three finalists are selected. Once the final three individuals consent to having their names released, then the county will release their names at least 14 days before hiring one of them. See O.C.G.A. § 50-18-72(a)(11).
- _____ [Portions of the/The] documents are of historical research value and have had a restriction of access placed upon them by the owner/donor and are not required to be released. See O.C.G.A. § 50-18-72(a)(13).
- _____ [Portions of the/The] documents would reveal the location or character of a historic property that the Division of Historic Preservation of the Department of Natural Resources has determined the disclosure of which would create a substantial risk of harm, theft, or destruction to the property and are not required to be released. See O.C.G.A. § 50-18-72(a)(14).
- _____ [Portions of the/The] documents would reveal records of farm water use by individual farms determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105 and are not required to be released. See O.C.G.A. § 50-18-72(a)(15).
- _____ [Portions of the/The] documents contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats, the disclosure of which has been determined by the Department of Natural Resources to create a substantial risk of harm, theft, or destruction to the species or habitat and are not required to be released. See O.C.G.A. § 50-18-72(a)(18).
- _____ [Portions of the/The] documents would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems and are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with a neighborhood watch or public safety notification program are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents include social security number, mother's birth name, day and month of birth, bank account information, account or utility account passwords and numbers, credit/debit card information, unlisted phone number, insurance information, or medical information and may not be required to be released except in limited situations defined by law. See O.C.G.A. § 50-18-72(a)(20).
- _____ [Portions of the/The] documents would reveal the home address, home telephone number, social security number, insurance information or medical information, or identity of immediate family member or dependent of a public employee. See O.C.G.A. § 50-18-72(a)(21).

- _____ [Portions of the/The] documents would reveal the names, or date of birth of children, or the names, addresses, telephone numbers, or e-mail addresses of parents, immediate family, and emergency contacts or names of individuals who report violation in records of the Department of Early Care and Learning and are not required to be released. See O.C.G.A. § 50-18-72(a)(22).
- _____ [Portions of the/The] documents contain information that would disclose any component in the process used to adopt an electronic signature. See O.C.G.A. § 50-18-72(a)(23).
- _____ [Portions of the/The] documents would reveal the home address, home telephone number, work address, work telephone number, or hours of employment of any individual participating in or who expressed an interest in participating in any carpooling or rideshare program and are not required to be released. See O.C.G.A. § 50-18-72(a)(24).
- _____ Records that could compromise public security including vulnerability assessments, security plans, and blueprint of public facilities. See O.C.G.A. § 50-18-72(a)(25).
- _____ Portions of records identifying callers to 9-1-1 call centers by name, address, and phone number. See O.C.G.A. § 50-18-72(a)(26).
- _____ Portions of records in audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller if he or she is a minor or died during the call. See O.C.G.A. § 50-18-72(a)(26.1).
- _____ Records that contain audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation. See O.C.G.A. § 50-18-72(a)(26.2).
- _____ Portions of records identifying children 12 years of age or younger participating in public recreation programs by name, address and phone number, or emergency contact. See O.C.G.A. § 50-18-72(a)(27).
- _____ [Portions of the/The] documents would reveal a trade secret and are not required to be released. See O.C.G.A. § 50-18-72(a)(34).
- _____ [Portions of the/The] documents would reveal a potentially commercially valuable plan, proposal, or strategy of the hospital authority and are not required to be released. See O.C.G.A. §§ 50-18-72(a)(39) and 31-7-75.2.
- _____ [Portions of the/The] documents are subject to the attorney-client privilege or the attorney work product confidentiality and are not factual findings are not required to be released. See O.C.G.A. §§ 50-18-72(a)(41) and (42).
- _____ [Portions of the/The] documents contain confidential tax information and are not required to be released. See O.C.G.A. §§ 50-18-72(a)(43), 48-2-15 and/or 48-5-314(a).
- _____ Original trial exhibits are not permitted to be inspected without the approval of the judge. However, a copy, photograph or other reproduction may be provided. See O.C.G.A. §§ 50-18-72(c) and (d).
- _____ Trial exhibits in cases involving alleged violations of O.C.G.A. 16-12-100 are not permitted to be inspected or copied without a court order. See O.C.G.A. §§ 50-18-72(c) and (d).
- _____ Records that provide cable and video service provider financial information are not required to be released. See O.C.G.A. § 36-76-6(d).
- _____ [Portions of the/The] documents contain vital records except from disclosure and are not required to be released. See O.C.G.A. §§ 50-18-76; 31-10-25; 19-7-46.1.

____ Other: _____

(Include all applicable legal authority for such exemption with code section, subsection, and paragraph.)

The [portion of the documents subject to release/documents] are available at this time. Please come to Room _____ of the _____ County Courthouse [during normal business hours/on _____ date. Please call _____ at _____ to set up a convenient appointment]. If you still desire copies of 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 document 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 county 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 15 minutes. Should you need copies of any of the requested records, the charge is generally 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,

 _____ County Records Custodian

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

 Requestor

 Date

Model Response to Open Records Request

WHEN RECORDS ARE NOT AVAILABLE WITHIN THREE BUSINESS DAYS

(This response should be used when an individual has requested to review, inspect, or obtain copies of records, portions of which may be exempt, that cannot be made available within three business days of the request, are overly broad requests, are completely exempt from disclosure, or are unavailable)

Date _____ *(to be sent within three business days of the request for record)*

Dear _____ *(Requestor):*

Thank you for your request to review county records and your interest in county government. I received your [verbal/written] open records law request on _____ *(date)* for copies of the following _____ County documents or records:

_____ *(insert description of the requested documents or records)*

AVAILABILITY

_____ All of the documents that you requested are required to be released under the open records law, but they cannot be made available to you within three business days of your request. They will, however, be made available to you on _____ *(insert timetable for availability of the requested documents)*.

_____ The [portion of the documents subject to release/documents] cannot be made available within three business days of your request. They will, however, be made available to you on _____ *(insert timetable for availability of the requested documents)*.

_____ The [portion of the documents subject to release/documents] are not available in an electronic format. The records may however be [copied/personally inspected]. The records [are now available/cannot be made available within three business days of your request, but will be made available to you on _____ *(insert timetable for availability of the requested documents)*.]

_____ It has been determined that _____ County does not maintain documents or records that are responsive to your request. *(You may wish to contact the City of _____/the State/etc. as they may maintain such records.)*

_____ It has been determined that none of the records that you have requested are subject to release under the open records law.

FURTHER ACTION REQUIRED

_____ This request is [very broad/voluminous]. While we are able to comply with your open records request as stated, it may be less costly to you if your request were more specific. It might be helpful if you could [be more specific with/further explain] your request so that I can better locate the documents that you would like, thereby reducing your cost.

EXEMPT RECORDS

After reviewing your request, it has been determined the following exemptions apply:

- _____ [Portions of the/The] documents are not required to be released pursuant to a court order issued by the _____ Court of _____ [Judicial Circuit/County] dated _____. See O.C.G.A. § 50-18-71(a).
- _____ [Portions of the/The] documents are specifically required by the federal government to be kept confidential (see O.C.G.A. § 50-18-72(a)(1) and _____). (*Insert the citation to the federal code or regulation that requires the document to be kept confidential.*)
- _____ [Portions of the/The] documents are medical records and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents contain information the disclosure of which would be an invasion of personal privacy and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents were compiled for law enforcement or prosecution purposes and would disclose (1) the identity of a confidential source, (2) confidential investigative or prosecution material that would endanger the life or physical safety of an individual, or (3) the existence of a confidential surveillance or investigation and are not required to be released. See O.C.G.A. § 50-18-72(a)(3).
- _____ [Portions of the/The] documents are records of a pending investigation or prosecution of a criminal or unlawful activity by a law enforcement, prosecuting, or regulatory agency and are not required to be released. See O.C.G.A. § 50-18-72(a)(4).
- _____ [Portions of the/The] documents are Individual Georgia Uniform Motor Vehicle Accident Reports, which may only be released to certain individuals who complete a statement of need. See O.C.G.A. § 50-18-72(a)(5).
- _____ [Portions of the/The] documents contain 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, which are not subject to disclosure. See O.C.G.A. § 50-18-72(a)(6).
- _____ [Portions of the/The] documents are confidential evaluations relating to the appointment or hiring of a public officer or employee and are not required to be released. See O.C.G.A. § 50-18-72(a)(7).
- _____ [Portions of the/The] documents contain materials of an investigation relating to the suspension or firing of, or a complaint against, a public officer or employee, which have been presented to the county or concluded for less than 10 days and are not required to be released. See O.C.G.A. § 50-18-72(a)(8).
- _____ [Portions of the/The] documents contain information relating to the acquisition of real property and are not required to be released until the property is purchased or the acquisition is abandoned. See O.C.G.A. § 50-18-72(a)(9).
- _____ [Portions of the/The] documents contain pending bids or proposals on public works or road construction projects and are not required to be released until the final award is made or the project is abandoned. See O.C.G.A. § 50-18-72(a)(10).
- _____ [Portions of the/The] documents would identify individuals applying for or under consideration for employment or appointment as an executive head and are not required to be released until up to three finalists are selected. Once the final three individuals consent to having their names released, then the county will release their names at least 14 days before hiring one of them. See O.C.G.A. § 50-18-72(a)(11).

- _____ [Portions of the/The] documents are of historical research value and have had a restriction of access placed upon them by the owner/donor and are not required to be released. See O.C.G.A. § 50-18-72(a)(13).
- _____ [Portions of the/The] documents would reveal the location or character of a historic property that the Division of Historic Preservation of the Department of Natural Resources has determined the disclosure of which would create a substantial risk of harm, theft, or destruction to the property and are not required to be released. See O.C.G.A. § 50-18-72(a)(14).
- _____ [Portions of the/The] documents would reveal records of farm water use by individual farms determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105 and are not required to be released. See O.C.G.A. § 50-18-72(a)(15).
- _____ [Portions of the/The] documents contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats the disclosure of which has been determined by the Department of Natural Resources to create a substantial risk of harm, theft, or destruction to the species or habitat and are not required to be released. See O.C.G.A. § 50-18-72(a)(18).
- _____ [Portions of the/The] documents would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems and are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with a neighborhood watch or public safety notification program are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents include social security number, mother's birth name, day and month of birth, bank account information, account or utility account passwords and numbers, credit/debit card information, unlisted phone number, insurance information, or medical information and may not be required to be released except in limited situations defined by law. See O.C.G.A. § 50-18-72(a)(20).
- _____ [Portions of the/The] documents would reveal the home address, home telephone number, social security number, insurance information or medical information, or identity of immediate family member or dependent of a public employee and are not required to be released. See O.C.G.A. § 50-18-72(a)(21).
- _____ [Portions of the/The] documents would reveal the names or date of birth of children, or the names, addresses, telephone numbers, or e-mail addresses of parents, immediate family, and emergency contacts or names of individuals who report violation in records of the Department of Early Care and Learning and are not required to be released. See O.C.G.A. § 50-18-72(a)(22).
- _____ [Portions of the/The] documents contain information that would disclose any component in the process used to adopt an electronic signature and are not required to be released. See O.C.G.A. § 50-18-72(a)(23).
- _____ [Portions of the/The] documents would reveal the home address, home telephone number, work address, work telephone number, or hours of employment of any individual participating in or who expressed an interest in participating in any carpooling or rideshare program and are not required to be released. See O.C.G.A. § 50-18-72(a)(24).
- _____ Records that could compromise public security including vulnerability assessments, security plans, and blueprints of public facilities. See O.C.G.A. § 50-18-72(a)(25).

- _____ Portions of records identifying callers to 9-1-1 call centers by name, address, and phone number and are not required to be released. See O.C.G.A. § 50-18-72(a)(26).
- _____ Portions of records in audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller if he or she is a minor or died during the call and are not required to be released. See O.C.G.A. § 50-18-72(a)(26.1).
- _____ Records that contain audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation and are not required to be released. See O.C.G.A. § 50-18-72(a)(26.2).
- _____ Portions of records identifying children 12 years of age or younger participating in public recreation programs by name, address, and phone number or emergency contact and are not required to be released. See O.C.G.A. § 50-18-72(a)(27).
- _____ [Portions of the/The] documents would reveal a trade secret and are not required to be released. See O.C.G.A. § 50-18-72(a)(34).
- _____ [Portions of the/The] documents would reveal a potentially commercially valuable plan, proposal, or strategy of the hospital authority and are not required to be released. See O.C.G.A. §§ 50-18-72(a)(39) and 31-7-75.2.
- _____ [Portions of the/The] documents are subject to the attorney-client privilege or the attorney work product confidentiality and are not factual findings are not required to be released. See O.C.G.A. §§ 50-18-72(a)(41) and (42).
- _____ [Portions of the/The] documents contain confidential tax information and are not required to be released. See O.C.G.A. §§ 50-18-72(a)43, 48-2-15 and/or 48-5-314(a).
- _____ Original trial exhibits are not permitted to be inspected without the approval of the judge. However, a copy, photograph, or other reproduction may be provided. See O.C.G.A. §§ 50-18-72(c) and (d).
- _____ Trial exhibits in cases involving alleged violations of O.C.G.A. 16-12-100 are not permitted to be inspected or copied without a court order. See O.C.G.A. §§ 50-18-72(c) and (d).
- _____ Records that provide cable and video service provider financial information are not required to be released. See O.C.G.A. § 36-76-6(d).
- _____ [Portions of the/The] documents contain vital records except from disclosure and are not required to be released. See O.C.G.A. §§ 50-18-76; 31-10-25; 19-7-46.1.
- _____ Other: _____

(Include all applicable legal authority for such exemption with code section, subsection, and paragraph.)

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, redact, copy, 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 (i.e., staff time searching for, retrieving, and copying the requested documents) 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 15 minutes. The charge for copies is generally 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,

it is estimated that there are 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 that the administrative and copying costs are your responsibility. Please call _____ at _____ if you should have any questions.

Sincerely,

_____ County Records Custodian

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

_____ Requestor

_____ Date

Model Response to Open Records Request

WHEN AN ERROR IS DISCOVERED IN THE DESIGNATION OF AN EXEMPTION

(This letter should be used when the county has (1) indicated the wrong citation to legal authority for an exemption; (2) indicated an exemption to the open records law that does not apply to the requested documents, or (3) discovered that an additional exemption applies to the request records.)

Date _____

Dear _____ (Requestor):

With regard to the response to your open records law request of _____ (date) for copies of the following _____ County documents or records: _____ (insert a description of the requested documents or records), it has been discovered that [an exemption was improperly designated/the legal authority to an exemption was improperly cited/additional exemptions apply]. 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 are not required to be released pursuant to a court order issued by the _____ Court of _____ [Judicial Circuit/County] dated _____. See O.C.G.A. § 50-18-71(a).
- _____ [Portions of the/The] documents are specifically required by the federal government to be kept confidential (see O.C.G.A. § 50-18-72(a)(1) and _____). *(Insert the citation to the federal code or regulation that requires the document to be kept confidential.)*
- _____ [Portions of the/The] documents are medical records and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents contain information the disclosure of which would be an invasion of personal privacy and are not required to be released. See O.C.G.A. § 50-18-72(a)(2).
- _____ [Portions of the/The] documents were compiled for law enforcement or prosecution purposes and would disclose (1) the identity of a confidential source, (2) confidential investigative or prosecution material that would endanger the life or physical safety of an individual, or (3) the existence of a confidential surveillance or investigation and are not required to be released. See O.C.G.A. § 50-18-72(a)(3).
- _____ [Portions of the/The] documents are records of a pending investigation or prosecution of a criminal or unlawful activity by a law enforcement, prosecuting, or regulatory agency and are not required to be released. See O.C.G.A. § 50-18-72(a)(4).
- _____ [Portions of the/The] documents are Individual Georgia Uniform Motor Vehicle Accident Reports, which may only be released to certain individuals who complete a statement of need. See O.C.G.A. § 50-18-72(a)(5).
- _____ [Portions of the/The] documents contain 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, which are not subject to disclosure. See O.C.G.A. § 50-18-72(a)(6).

- _____ [Portions of the/The] documents are confidential evaluations relating to the appointment or hiring of a public officer or employee and are not required to be released. See O.C.G.A. § 50-18-72(a)(7).
- _____ [Portions of the/The] documents contain materials of an investigation relating to the suspension or firing of, or a complaint against, a public officer or employee, which have been presented to the county or concluded for less than 10 days and are not required to be released. See O.C.G.A. § 50-18-72(a)(8).
- _____ [Portions of the/The] documents contain information relating to the acquisition of real property and are not required to be released until the property is purchased or the acquisition is abandoned. See O.C.G.A. § 50-18-72(a)(9).
- _____ [Portions of the/The] documents contain pending bids or proposals on public works or road construction projects and are not required to be released until the final award is made or the project is abandoned. See O.C.G.A. § 50-18-72(a)(10).
- _____ [Portions of the/The] documents would identify individuals applying for or under consideration for employment or appointment as an executive head and are not required to be released until up to three finalists are selected. Once the final three individuals consent to having their names released, then the county will release their names at least 14 days before hiring one of them. See O.C.G.A. § 50-18-72(a)(11).
- _____ [Portions of the/The] documents are of historical research value and have had a restriction of access placed upon them by the owner/donor and are not required to be released. See O.C.G.A. § 50-18-72(a)(13).
- _____ [Portions of the/The] documents would reveal the location or character of a historic property that the Division of Historic Preservation of the Department of Natural Resources has determined the disclosure of which would create a substantial risk of harm, theft or destruction to the property and are not required to be released. See O.C.G.A. § 50-18-72(a)(14).
- _____ [Portions of the/The] documents would reveal records of farm water use by individual farms determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105 and are not required to be released. See O.C.G.A. § 50-18-72(a)(15).
- _____ [Portions of the/The] documents contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats, the disclosure of which has been determined by the Department of Natural Resources to create a substantial risk of harm, theft or destruction to the species or habitat and are not required to be released. See O.C.G.A. § 50-18-72(a)(18).
- _____ [Portions of the/The] documents would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems and are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by the county in connection with a neighborhood watch or public safety notification program are not required to be released. See O.C.G.A. § 50-18-72(a)(19).
- _____ [Portions of the/The] documents include social security number, mother's birth name, day and month of birth, bank account information, account or utility account passwords and numbers, credit/debit card information, unlisted phone number, insurance information, or medical information and may not be required to be released except in limited situations defined by law. See O.C.G.A. § 50-18-72(a)(20).

- _____ [Portions of the/The] documents would reveal the home address, home telephone number, social security number, insurance information or medical information, or identity of immediate family member or dependent of a public employee and are not required to be released. See O.C.G.A. § 50-18-72(a)(21).
- _____ [Portions of the/The] documents would reveal the names, or date of birth of children, or the names, addresses, telephone numbers, or e-mail addresses of parents, immediate family, and emergency contacts or names of individuals who report violation in records of the Department of Early Care and Learning and are not required to be released. See O.C.G.A. § 50-18-72(a)(22).
- _____ [Portions of the/The] documents contain information that would disclose any component in the process used to adopt an electronic signature and are not required to be released. See O.C.G.A. § 50-18-72(a)(23).
- _____ [Portions of the/The] documents would reveal the home address, home telephone number, work address, work telephone number, or hours of employment of any individual participating in or who expressed an interest in participating in any carpooling or rideshare program and are not required to be released. See O.C.G.A. § 50-18-72(a)(24).
- _____ Records that could compromise public security including vulnerability assessments, security plans, and blueprint of public facilities and are not required to be released. See O.C.G.A. § 50-18-72(a)(25).
- _____ Portions of records identifying callers to 9-1-1 call centers by name, address, and phone number and are not required to be released. See O.C.G.A. § 50-18-72(a)(26).
- _____ Portions of records in audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller if he or she is a minor or died during the call and are not required to be released. See O.C.G.A. § 50-18-72(a)(26.1).
- _____ Records that contain audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation and are not required to be released. See O.C.G.A. § 50-18-72(a)(26.2).
- _____ Portions of records identifying children 12 years of age or younger participating in public recreation programs by name, address, and phone number or emergency contact and are not required to be released. See O.C.G.A. § 50-18-72(a)(27).
- _____ [Portions of the/The] documents would reveal a trade secret and are not required to be released. See O.C.G.A. § 50-18-72(a)(34).
- _____ [Portions of the/The] documents would reveal a potentially commercially valuable plan, proposal, or strategy of the hospital authority and are not required to be released. See O.C.G.A. §§ 50-18-72(a)(39) and 31-7-75.2.
- _____ [Portions of the/The] documents are subject to the attorney-client privilege or the attorney work product confidentiality and are not factual findings are not required to be released. See O.C.G.A. §§ 50-18-72(a)(41) and (42).
- _____ [Portions of the/The] documents contain confidential tax information and are not required to be released. See O.C.G.A. §§ 50-18-72(a)43, 48-2-15 and/or 48-5-314(a).
- _____ Original trial exhibits are not permitted to be inspected without the approval of the judge. However, a copy, photograph, or other reproduction may be provided. See O.C.G.A. § 50-18-72(c) and (d).
- _____ Trial exhibits in cases involving alleged violations of O.C.G.A. 16-12-100 are not permitted to be inspected or copied without a court order. See O.C.G.A. §§ 50-18-72(c) and (d).

____ Records that provide cable and video service provider financial information are not required to be released. See O.C.G.A. § 36-76-6(d).

____ [Portions of the/The] documents contain vital records except from disclosure and are not required to be released. See O.C.G.A. §§ 50-18-76; 31-10-25; 19-7-46.1.

____ Other: _____

(Include all applicable legal authority for such exemption with code section, subsection and paragraph.)

I apologize for any inconvenience. Please call _____ at _____ if you should have any questions.

Sincerely,

_____ County Records Custodian

Model Log of Open Records Requests

(This form may be used to keep track of open records requests, particularly when the requestor does not make a written request.)

_____ County _____ Department Open Records Log

Request Number: _____ Date: _____ Time: ____ a.m./p.m.

Request Made: in person/by telephone/by fax/by e-mail/by internet/in writing (*circle one*)

Requestor Name (*if known*): _____

Requestor Address (*if known*): _____

Requestor Telephone Number (*if known*): _____

Requestor E-Mail Address (*if known*): _____

Description of records: _____

Copy charges (10¢ per standard sized page x ____ copies): \$ _____

Actual cost for non-standard sized materials: \$ _____

Additional charges as provided by law for specialized records: \$ _____

Charge for administrative time (_____ hours spent responding to the request minus 15 minutes x \$ _____ the hourly rate of the lowest-paid, full-time person who could respond to the request; no charge for the first 15 minutes): \$ _____

Requestor notified of costs on: _____ (*insert date that requestor is notified of cost*) in person/by telephone/by fax/by e-mail/by internet/in writing (*circle one*)

Requestor notified of any exemptions applying to records on _____ (*insert date that requestor is notified of exemptions*) in person/by telephone/by fax/by e-mail/by internet/in writing (*circle one*)

Requestor notified of availability of records on _____ (*insert date that requestor is notified of availability of records*) in person/by telephone/by fax/by e-mail/by internet/in writing (*circle one*)

Records inspected or copies obtained by requestor on: _____ (*insert date*)

Copy and/or administrative charges paid by requestor on: _____ (*insert date*)

Notes:

Model Request from News Media Representative for Social Security Number and Day and Month of Birth

(A copy of this sworn statement must be received by the county before providing social security numbers and day and month of birth to news media representatives.)

STATE OF GEORGIA
COUNTY OF _____

AFFIDAVIT OF NEWS MEDIA REPRESENTATIVE REQUESTING SOCIAL SECURITY NUMBER AND DAY AND MONTH OF BIRTH

_____, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1. I am legally authorized to represent _____, a news media organization located in _____.
2. I am seeking to obtain social security numbers and day and month of birth of the following individuals or group of individuals who are not public employees:

3. I am seeking the abovementioned information solely for use in connection with news gathering and reporting in accordance with O.C.G.A. § 50-18-72(a)(20)(A).

This _____ day of _____, _____.

Signature

Sworn to and subscribed
before me this ____ day of
_____, _____.

Notary Public

My commission expires:

Model Statement of Need Required to Obtain Accident Reports

(A statement of need must be submitted in order for individuals other than the parties to the accident and their attorneys to obtain a copy of an Individual Georgia Uniform Motor Vehicle Accident Report.)

_____ County Statement of Need to Obtain Accident Report

Pursuant to the open records law, I qualify to obtain a copy of the Individual Georgia Uniform Motor Vehicle Accident Report for

_____ Motor Vehicle Accident Report Number _____ *(insert accident report number, if known)*; or

_____ The accident occurring on _____ *(insert date of accident)* at _____ *(describe location of accident)* involving the following individuals _____ *(list the drivers of the vehicle(s) involved in the accident)*.

I am permitted access to this accident report because

_____ I have a personal, professional, or business relationship with _____ *(list the party to the accident with whom you have such a relationship)*.

_____ I own or lease an interest in _____ *(describe the property that was damaged in the accident)*.

_____ I was injured by the accident.

_____ I was a witness to the accident.

_____ I insure _____ *(list the party to the accident insured by you)*.

_____ I insure _____ *(describe the property damaged by the accident that is insured by you)*.

_____ I am a prosecutor or a publicly employed law enforcement officer.

_____ I am alleged to be liable to another party as a result of the accident.

_____ I am an attorney who needs the accident report as part of a criminal case, investigation, of potential claim involving the safety of a roadway, railroad crossing, or intersection.

_____ I am gathering information as a representative of _____ *(list the news media organization)*.

_____ I am seeking a copy of a report for an accident that occurred more than 30 days ago for the purpose of conducting research in the public interest on accident prevention, prevention of injuries/damages in accidents, determination of fault in an accident(s).

Signature

Date

(printed name)

(address)

Open Meetings

Court Decisions and
Attorney General Opinions



Open Meetings Court Decisions and Attorney General Opinion Summaries

COVERED AGENCIES

Jersawitz v. Fortson
Georgia Court of Appeals
213 Ga. App. 796 (1994)

Jersawitz alleged that the Olympic Task Force Selection Committee, which had Atlanta Housing Authority (AHA) commissioners and officials as members, was subject to the open meetings law. The committee, the Georgia Court of Appeals noted, was charged with recommending proposals for the revitalization of a public housing project in preparation for the Olympics and was formed with the knowledge and approval of the AHA. Furthermore, the committee was not solely advisory in nature because it consisted of two AHA commissioners and other AHA officials. The Court also held that the committee could not hold a meeting required to be open and merely provide a videotape of the meeting. A videotape of a meeting intended to be open to the public is not an adequate substitute for in-person access. Furthermore, the Court noted that the committee waived its right to conduct a closed meeting by permitting the presence of members of the general public not affiliated with either the committee or the AHA.

Attorney General Opinion U95-22
1995 Op. Att'y Gen. No. U95-22

According to the Attorney General, the board of tax assessors and the board of tax equalization must comply with the open meetings law. All official proceedings and actions of the boards must be conducted in open meetings. However, either board may close a meeting to discuss matters that are considered confidential by O.C.G.A. § 50-14-2. Additionally, the boards may preserve the confidentiality of taxpayer records as provided by O.C.G.A. § 48-5-314.

Bryan County Board of Equalization v. Bryan County Board of Tax Assessors Georgia Court of Appeals
253 Ga. App. 831 (2002)

The Georgia Court of Appeals held that the board of equalization is subject to the open meetings law. The board of equalization must conduct its deliberations and votes on tax matters in an open and public meeting.

Attorney General Opinion U10-1
2010 Op. Att'y Gen. No. U10-1

According to the Attorney General, the open meetings law applies to the Drug Utilization Review Board created by the Georgia Department of Community Health even though the board is only advisory in nature and takes no binding action. The board is a vehicle of the department of its actions, and board meetings cover official business.

ACCESS TO MEETINGS / NOTICE / PROCEDURES

Jersawitz v. Fortson
Georgia Court of Appeals
213 Ga. App. 796 (1994)

Jersawitz alleged that the Olympic Task Force Selection Committee which had Atlanta Housing Authority (AHA) commissioners and officials as members, was subject to the open meetings law. The committee, the Court noted, was charged with recommending proposals for the revitalization of a public housing project in preparation for the Olympics and was formed with the knowledge and approval of the Atlanta Housing Authority. Furthermore, the committee was

not solely advisory in nature because it consisted of two AHA commissioners and other AHA officials. The Court also held that the committee could not hold a meeting required to be open and merely provide a videotape of the meeting. A videotape of a meeting intended to be open to the public is not an adequate substitute for in-person access. Furthermore, the Court noted that the committee waived its right to conduct a closed meeting by permitting the presence of other members of the general public not affiliated with either the committee or the AHA.

Blackston v. State of Alabama
U.S. Court of Appeals, 11th Circuit
30 F.3d 117 (11th Cir. 1994)

The U.S. Court of Appeals held that Blackston could not be prohibited from recording a public meeting. The Court held that the ability to record a public meeting impacted Blackston's ability to obtain access and present information about the committee and its proceedings and therefore it touched upon expressive conduct protected by the Free Speech Clause of the First Amendment. According to the Court, the recording prohibition may be a "time, place, and manner" restriction on expressive conduct that, if content-neutral, must be supported by a substantial government interest that did not unreasonably limit alternative avenues of communication.

Beck v. Crisp County Zoning Board of Appeals
Georgia Court of Appeals
221 Ga. App. 801 (1996)

Neighboring landowners appealed the grant of a conditional use permit to Harold McCay, contending that the Zoning Board of Appeals violated the open meetings law. The board held an advertised meeting where McCay's request for an airstrip was part of the published agenda, which included the following items:

1. HEARING—Request from Frankie Johnson for a conditional use permit
 - 1a. Adjourn Public Hearing
2. HEARING—Request from Harold McCay for a conditional use permit
 - 2a. Adjourn Public Hearing
3. DECISION & VOTE—Frankie Johnson
4. DECISION & VOTE—Harold McCay
5. Minutes—March 21, 1995
6. Old Business
7. New Business
8. Adjourn Meeting

After the board "adjourned" the public hearing portion of the meeting, the chair explained that the board would be voting on the application later in the meeting and explained how the final decision could be obtained. Although the board did not close the meeting or direct the landowners to leave, they left with the impression that the board had closed the meeting. The landowners contended that closing a portion of the meeting to the public was a violation of the open meetings law. The Court stated that there was no reason for the board to "adjourn" a public hearing. Further, the Court concluded that the proceeding was really an "evidentiary hearing," not a "public hearing," that should have been "concluded," rather than "adjourned." The Court held that the entire meeting should have been open to the public and the action of the board to limit and expressly adjourn the public input portions of the meeting prior to the board's decision and vote on the matter was a violation of the open meetings law.

Claxton Enterprise v. Evans County Board of Commissioners**Georgia Court of Appeals****249 Ga. App. 870 (2001)**

The Evans County Administrator contacted each member of the Evans County Board of Commissioners to discuss changing the stated reason for closing a previously held meeting. At a subsequent meeting, without any public deliberation or vote, the board announced that it had erred in stating the reasons for closing the earlier meeting. Although the Court of Appeals believed that this implied that a “meeting” had been conducted among the members of the board, it found that the county administrator discussing the issue one-on-one with the board members did not technically constitute a “meeting” for purposes of the open meetings law because it occurred over a period of time and at no particular place. However, the Court forecasted that a quorum of the commissioners could violate the open meetings law through “virtual meetings” conducted in writing (i.e., by polling the commissioners in writing), by the telephone or over the computer.

Maxwell v. Carney**Georgia Supreme Court****273 Ga. 864 (2001)**

The Brooks County Board of Commissioners held their regularly scheduled meeting in their regular meeting room in the county administrative building. A large crowd of people attempted to attend the meeting, but the room was filled beyond capacity. Although a larger room was available, the board refused to move the meeting. The trial court enjoined the commissioners from conducting meetings in the county administrative building unless both the larger room and the smaller meeting rooms were available for use. Furthermore, the trial court ruled that if a new meeting site was selected, it must accommodate any member of the public who wished to attend. In addition, the trial court ruled that the public notice of the meeting, which stated that the meeting would be held in the administration building, was legally sufficient, regardless of which room of the building was utilized. The Georgia Supreme Court upheld the trial court’s order that the commissioners conduct meetings in the larger meeting room when the regular meeting room was too small to accommodate the public. However, recognizing the practical impossibility, the Court held that the commissioners could not be required to provide adequate seating to all members of the public who desire to attend a meeting.

Slaughter v. Brown**Georgia Court of Appeals****269 Ga. App. 211 (2004)**

The board of education held monthly meetings in its central office. It posted a notice of the new location for its regular meetings. Thereafter, a special called meeting was held, which included notice of the new location. However, the meeting was actually held at the former meeting location. The trial court found in favor of the taxpayers and awarded them attorneys’ fees. On appeal, the court held that the trial court had correctly determined that the notice that was posted gave an incorrect meeting place. In addition, the board was not saved by the provision allowing for meetings to be held without proper 24-hour notice, so long as the reason for holding the meeting within 24 hours and the nature of the notice was recorded in the minutes of the meeting. The board did not comply with said provisions and therefore violated the Open Meetings Act. The board also challenged the award of attorneys’ fees because the board attempted to post proper notice in two places and gave oral notice to the county’s legal organ. The Supreme Court had previously rejected the argument that lack of bad faith provides evidence of “special circumstances” when considering an award of attorneys’ fees (see *Claxton Enterprise v. Evans County*, 249 Ga. App. 870). In addition, the board’s seemingly cavalier attitude to their obligations under the Act supported the trial court’s determination that there was no substantial justification for failing to comply with the notice provisions and no special circumstances that would justify the denial of attorneys’ fees.

Lancaster v. Effingham County**Georgia Court of Appeals****273 Ga. App. 544 (2005)**

Lancaster and other taxpayers filed suit against Effingham County and members of its board of commissioners, claiming that the board took several unauthorized actions regarding the purchase and sale of land, the rezoning of property, and the calling of meetings following the county's acquisition of land in efforts to construct a new water treatment facility. The Georgia Court of Appeals affirmed the trial court's ruling in favor of the County, holding that the county's purchase and sale was not improper because a county has broad discretion in determining the manner and extent to which it will acquire property for its use. The Court stated that County actions taken in good faith will not be disturbed by the courts. Further, the county did not violate the requirements of the Open Meetings Act because it gave proper notice of the meeting to amend the budget and there was no evidence that the board intentionally omitted the "general reserve fund discussion" (the subject of one of the defendants' complaints) from the agenda prior to the meeting for the purpose of deceiving the public. The Court also held that the defendants did not have standing to challenge the rezoning of the property because neither of them lived adjacent to the property nor would they be significantly affected by the change.

Bradley Plywood Corp. v. Mayor and Aldermen of Savannah**Georgia Court of Appeals****271 Ga. App. 828 (2005)**

In three related cases, the plaintiff property owners brought suit that an ordinance providing for the annexation of their properties was null and void because the ordinance was adopted at an improperly rescheduled meeting. The meeting was held prior to the date on which it would normally have been held, December 25. The Georgia Court of Appeals held it was unnecessary to decide if the Open Meetings Act precluded the city from rescheduling a regular meeting to an earlier date because the meeting at which the ordinance was adopted was not rescheduled. It was noted on the official notice of city government meetings that the meeting would not be held on its normal day because of the holiday. The official notice stated that the meeting date would be scheduled. The meeting was held on the date scheduled.

EarthResources, LLC v. Morgan County et al.**Georgia Supreme Court****281 Ga. 396 (2006)**

EarthResources sued Morgan County based upon the denial of its written verification of zoning compliances necessary for a state permit to build a landfill. EarthResources claimed that the decision of the board at which the verification was denied violated the Open Meetings Act. The appellant raised two issues: (1) notice of the meeting was insufficient because the notice was posted at the regular meeting place, but the meeting was conducted at a different location; and (2) the agenda for the meeting was posted at the wrong site. The Court held that the county properly posted the notice in a timely fashion at the offices of the board of commissioners, which is designated as the regular meeting place, and that the notice properly advised the public that the EarthResources meeting would be held at an alternative site. As to the agenda for the meeting, it was available upon request at the office of the board and was posted on a bulletin board there, but not at the alternative site. The court held that while not posting the agenda at the alternative site is a technical violation of O.C.G.A. § 50-14-1(e)(1), it was not substantial enough to rule in favor of EarthResources' claim against the county.

Anti-Landfill Corporation, Inc., v. North American Metal Company**Georgia Court of Appeals****299 Ga. App. 509 (2009)**

A citizens group brought suit on the basis that Ware County violated the Open Meetings Act by failing to provide notice of a meeting to sign a lease agreement to operate a landfill with the North American Metal Company. The Court held that the group's claim was untimely and upheld the trial court's decision to grant summary judgment in favor of North American Metal Company.

Closed Meetings/Exceptions to the Open Meetings Act

GENERAL

Attorney General Opinion U98-3 1998 Op. Att'y Gen. No. U98-3

The Attorney General opined on several aspects of executive sessions and the open meetings law. First in determining who may attend an executive session (in addition to the members of the board of commissioners), the board, on a case-by-case basis, may include those individuals whose presence is consistent with the exception to the open meetings law under which the executive session is held. Second, the Attorney General opined that an executive session may be held in the middle of a regular public meeting, without advance notice of the executive session, provided that all conditions for notice of the open meeting and that all conditions for closing the meeting are met. Third, with regard to personnel matters, the Attorney General concluded that, although the board of commissioners may discuss the appointment of the county attorney, county administrator, or county physician in closed session, the vote on the actual appointment must be in an open session. Fourth, while deliberations to fill a vacancy on the board are required to be conducted in public, deliberations to fill other openings related to the county may be discussed in closed session. Fifth, the Attorney General confirmed that evidence relating to a disciplinary action of an employee must be given in an open session. Sixth, in response to the question of whether hospital authorities' "strategic planning sessions" conducted pursuant to O.C.G.A. § 31-7-75.2 must be conducted in open session, the Attorney General responded that hospital authorities and private hospital corporations through which hospital authorities carry out their official responsibilities are subject to the open meetings law and "may meet in closed session when 'discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law' O.C.G.A. § 50-14-3(5)." Seventh, the open meetings law does require that the official minutes of an open meeting reflect the specific reasons for closure of the meeting, the names of the individuals present, the vote on the motion to close the meeting, and minutes in the case of meeting closed to discuss acquisition of real estate. Finally, all votes must be taken in public.

ATTORNEY-CLIENT PRIVILEGE

Claxton Enterprise v. Evans County Board of Commissioners Georgia Court of Appeals 249 Ga. App. 870 (2001)

The Evans County Board of Commissioners closed a meeting to discuss "potential litigation," after an individual threatened to "take all legal means necessary" to recover money that he believed the county owed him. However, the county's attorney was not present at the closed meeting. The Georgia Court of Appeals held that, in order to close a meeting to discuss potential litigation with the county attorney under the attorney-client privilege exception to the open meetings law, the Court held that the "mere fear or suspicion of being sued" is not "potential litigation" sufficient to close a meeting. The Court opined that factors that a board can consider when determining whether there is a real and tangible threat of a lawsuit include (1) something in writing, such as a formal demand letter, that presents a claim against the county and indicates a sincere intent to sue; (2) previous or pre-existing litigation between the county and the other party or proof of ongoing litigation on similar claims; or (3) proof that the other party has hired an attorney and expressed an intent to sue. The Court also noted that the county attorney was not present at the executive session where the attorney-client privileges were invoked. Presumably the county attorney, or other legal counsel, must be present in order to rely on this exception since O.C.G.A. § 50-14-2(1) authorizes executive sessions to "consult and meet with legal counsel" pertaining to pending or threatened litigation.

Decatur County v. Bainbridge Post Searchlight, Inc.
Georgia Supreme Court
280 Ga. 706 (2006)

Bainbridge Post Searchlight, Inc. (Newspaper) brought this action against Decatur County for violations of the Open Records Act (O.C.G.A. § 50-18-70 *et seq.*) and the Open Meetings Act (O.C.G.A. § 50-14-1 *et seq.*). The grand jury forwarded presentments to the county attorney that questioned the propriety of the manner in which the county commissioners handled vacation and overtime policies applicable to county employees. The presentments were then discussed in a closed session of the county commissioners and the county attorney. The chair submitted an affidavit that the subject matter of the discussion was devoted to matters covered by an unspecified exception to the Open Meetings Act. The newspaper made two requests for the documents mentioned in the meetings and was denied both times. This action then ensued. The trial court found that the county commissioners violated the Open Meetings Act by conducting the closed session and the Open Records Act by refusing to comply with the request for the presentments. The county claimed attorney-client privilege as the basis for the closed meeting. On appeal, the Court observed that there was no pending litigation or threatened litigation. The presentments merely questioned the practices of the commissioners and thus the county commissioners did not qualify under the attorney-client exception. Additionally, any confidentiality that might have attached to the presentments was lost when the presentments were released by the district attorney to the county attorney for comment. The Court affirmed the County's violation of the Open Records Act and an award of attorneys' fees.

PERSONNEL MATTERS

Attorney General Opinion U95-15
1995 Op. Att'y Gen. No. U95-15

The Attorney General opined that a school board may not go into a closed session to hear complaints about school personnel from teachers, union representatives, parents, or other members of the public. Grievances to the school board about school personnel by interested members of the public must be done in a public meeting. Furthermore, any evidence or argument presented with regard to an inquiry into the actions of personnel must occur in an open meeting. The school board may close a meeting to discuss and deliberate disciplinary action or dismissal, but not merely for a general exchange of information about a particular event.

Moon v. Terrell County
Georgia Court of Appeals
249 Ga. App. 567 (2001)

The Terrell County Board of Commissioners received a memo from the Department of Corrections (DOC) stating that Moon, an employee of the Terrell County Correctional Institution (CI), had twice failed to appear for a polygraph examination in connection with a DOC investigation and was no longer permitted to have contact with the state prisoners housed at the CI. The board held a special called meeting with Moon and the acting warden of the CI to discuss whether to terminate Moon. When the board gave Moon the option of continuing in open session or going into closed session, Moon chose the closed session. After the closed session, the board voted to accept Moon's resignation. Moon alleged that the board violated the open meetings law, which allows the board of commissioners to go into executive session to discuss or deliberate upon the dismissal of a public officer or employee, but requires that the board receive evidence or hear arguments on charges filed against a public employee in an open session. The Court of Appeals held that consideration of the DOC memo in a closed session was in violation of the open meetings law because it constituted "receiving evidence or hearing charges filed to determine disciplinary action or dismissal of a public officer or employee." Additionally, the Court further found that Moon could not elect to close a meeting that should have been open.

MINUTES

Claxton Enterprise v. Evans County Board of Commissioners

Georgia Court of Appeals
249 Ga. App. 870 (2001)

The Georgia Court of Appeals held that meeting minutes and executive session affidavits must be recorded and made open to public inspection no later than the next regular meeting of the board of commissioners.

Moon v. Terrell County

Georgia Court of Appeals
249 Ga. App. 567 (2001)

O.C.G.A. § 50-14-4 requires that minutes of an open meeting reflect the names of those commissioners who vote to close a meeting. O.C.G.A. § 50-14-1(2) generally provides that it is presumed that an action taken was approved by each person in attendance unless the minutes reflect the name of person voting against the proposal or abstaining. The Georgia Court of Appeals held that, when a board votes to go into executive session, the minutes of the open meeting must specifically state the names of each of the board members present and voting to close the meeting.

FAILURE TO COMPLY

Atlanta Airmotive Inc. v. Royal

Georgia Court of Appeals
214 Ga. App. 760 (1994)

The Newnan-Coweta Airport Authority terminated a lease agreement with Atlanta Airmotive Inc. Airmotive alleged that, because the termination of the lease occurred in a meeting that was allegedly in violation of the open meetings law, the action was outside the scope of the authority members' official duties, and therefore, the authority could not assert sovereign immunity as a defense. However, the Court of Appeals held that the action terminating the lease was within the scope of the authority members' official duties and subject to sovereign immunity, even if the meeting was held in violation of the open meetings law.

Davis v. Shavers

Georgia Supreme Court
263 Ga. 785 (1994)

Actions taken in an illegally closed meeting were listed as grounds for a recall application. The Supreme Court of Georgia noted that holding a closed meeting may be grounds for recall if the circumstances of the official's participation in the meeting come within the definition of "grounds for recall." O.C.G.A. § 21-4-3(7) establishes "grounds for recall" as an act of malfeasance or misconduct, a violation of oath of office, a failure to perform duties prescribed by law or a willful misuse, conversion, or misappropriation of public property or funds.

May v. County Commissioners of Glascock County

Georgia Court of Appeals
227 Ga. App. 878 (1997)

This case arose when Glascock County awarded a contract to L. A. Brett & Sons, Inc. to construct a fire station in front of May's house. The contract was awarded in a meeting that did not have the date, time, or location of the meeting conspicuously posted. Initially, the trial court halted all work on the project until the commissioner complied with the open meetings law. The commissioners advertised for bids and published notice of a special meeting to award the bid. In the special meeting, the commissioners awarded the contract to the highest bidder, L. A. Brett & Sons, Inc., because that was the only responsive bid submitted. Additionally, the commissioners amended the budget to transfer capital

into a special account for the construction of the fire station. May sought to prevent the construction of the firehouse alleging that (1) the commissioners violated the open meetings law in the subsequent special called meeting; (2) the commissioners interfered with competition by awarding the bid to the highest bidder; and (3) the commissioners were not authorized to amend the budget without evidence of an unforeseeable factual change in circumstances. The Court rejected May's claims, holding that (1) the commissioners complied with the open meetings law and substantially complied with applicable public works bidding requirements; (2) May failed to present evidence that the commissioners interfered with the public works bidding process; and (3) May failed to provide evidence that changing governmental needs did not justify the budget amendment.

ATTORNEYS' FEES

Evans County Board of Commissioners v. Claxton Enterprise

Georgia Court of Appeals

255 Ga. App. 656 (2002)

After Claxton Enterprise sued the Evans County Board of Commissioners for improperly holding closed meetings, the Georgia Court of Appeals held that the county was required to pay the Claxton Enterprise attorneys' fees for both the trial and appeal of the case.

Moon v. Terrell County

Georgia Court of Appeals

260 Ga. App. 433 (2003)

This action arose out of an earlier case where the Court of Appeals held that the county did violate the Open Meetings Act by hearing evidence in a closed meeting on a personnel matter (see *Moon v. Terrell*, 249 Ga. App. 657). The appellate court found no error in the trial court's denial of Moon's claim for attorneys' fees, stating that even though the county could not have legally closed the meeting, there was evidence that the plaintiff requested that the meeting be closed and the commissioners complied out of concern for plaintiff's privacy. The Court held that since there was some evidence to support the trial court's determination that the commission acted with substantial justification, the trial court's decision to deny attorneys' fees was not clearly erroneous.

Slaughter v. Brown

Georgia Court of Appeals

2004 Ga. App. 211 (2004)

The board of education held monthly meetings in its central office. It posted a notice as to a new location for its regular meetings. Thereafter, a special called meeting was held, notice of which indicated that it was to be held at the new location. However, the meeting was actually held at the former meeting location. The trial court found in favor of the taxpayers and awarded them attorneys' fees. On appeal, the court held that the trial court had correctly determined that the notice that was posted gave an incorrect meeting place. In addition, the board was not saved by the provision allowing for meetings to be held without proper 24-hour notice so long as the reason for holding the meeting within 24 hours and the nature of the notice was recorded in the minutes of the meeting. The board did not comply with said provisions and therefore violated the Open Meetings Act. The board also challenged the award of attorneys' fees because the board attempted to post proper notice in two places and gave oral notice to the county's legal organ. The Supreme Court had previously rejected the argument that lack of bad faith provides evidence of "special circumstances" when considering an award of attorneys' fees (see *Claxton Enterprise v. Evans County*, 249 Ga. App. 870). In addition, the board's seemingly cavalier attitude to their obligations under the Act supported the trial court's determination that there was no substantial justification for failing to comply with the notice provisions and no special circumstances that would justify the denial of attorneys' fees.

City of Statesboro v. Dabbs
Georgia Supreme Court
289 Ga. 669 (2011)

The city had closed meetings regarding the budget and did not post proper notice or minutes. They were found in violation of the open meetings law. The city appealed the trial court's grant of attorneys' fees, arguing that there was not proper ante litem notice that the fees would be sought. The court held that the open meetings law authorizes attorneys' fees and the municipal ante litem notice only applies in tort cases. The fees were properly awarded.

**Note: The ante litem notice discussed in this case is for municipal governments only. County notice is addressed in O.C.G.A. § 36-11-1.*

REMEDIES

Wiggins v. Board of Commissioners
Georgia Court of Appeals
258 Ga. App. 666 (2002)

The trial court granted temporary and permanent injunctions ordering the county board of commissioners to comply with O.C.G.A. § 50-14-1 *et seq.*, the open meetings law, in the future. The appellate court reversed, saying that the board already had a duty to obey the law, and the complaint for injunctive relief is not available to compel compliance going forward.

City of Statesboro v. Dabbs
Georgia Supreme Court
289 Ga. 669 (2011)

After being found to have violated the open meetings law, the city appealed arguing that the trial court erred in ordering that substitute meetings and hearings should be held. The court held that the court has the right to grant injunctive or equitable relief per O.C.G.A. § 50-14-5(a). The trial court did not err in granting substitute meetings and hearings.

Gravitt v. Olens
Georgia Court of Appeals
333 Ga. App. 484 (2015)

The Attorney General (AG) brought a civil action under O.C.G.A. 50-14-5 to enforce the Open Meetings Act (OMA) against a mayor and city council for refusing to let a member of the public attend and videotape a city council meeting. The trial court denied the city's motion for summary judgment on the basis of sovereign and official immunity; granted summary judgment to the AG on the OMA claim; and imposed civil penalties and attorneys' fees against the city. The Court of Appeals affirmed in part and reversed in part. First, there is no merit to the city's contention that sovereign immunity bars an action against it to enforce an OMA claim brought by the AG. In ruling that it was not creating a judicial exception to sovereign immunity, the Court held that because the city derives its sovereign immunity from the state, and because the state's own immunity cannot be asserted against the state, the city had no immunity which could be asserted to bar the state's enforcement claim. The Court noted that the trial court relied on other reasoning to conclude that sovereign immunity did not apply here, and indicated that it would affirm the trial court nonetheless under the 'right for any reason' rule. Second, to the extent that the mayor took action which negligently violated the OMA, his actions were ministerial, and he was not entitled to official immunity. The third point involves statutory construction. The OMA does not define 'person'. O.C.G.A. 1-3-3 does define the term to include a 'corporation'. However, when looking at the OMA as a whole, it is clear the legislature did not intend a 'person', within the meaning of the OMA, to include a municipal corporation or any other kind of corporation. Hence, the trial court's ruling which allowed the imposition of civil penalties against the city under O.C.G.A. 50-14-6 was error.



Open Records

Court Decisions and
Attorney General Opinions

Open Records Court Decisions and Attorney General Opinion Summaries

COVERED AGENCIES

Clayton County Hospital v. Webb

Georgia Court of Appeals

208 Ga. App. 91 (1993)

The Court of Appeals held that the Clayton County Hospital Authority records were subject to the Open Records Act because the authority is a governmental entity created pursuant to O.C.G.A. § 31-7-70 *et seq.* The requested documents pertained to an application to the State Health Planning Agency for a certificate of need to build a hospital. Under O.C.G.A. § 50-18-70(e), a party in an administrative proceeding may not access public records pertaining to the subject of the proceeding without the prior approval of the presiding administrative law judge.* The case was sent back to the trial court to determine whether the party requesting the authority's records acted as an individual or on behalf of a party to the certificate of need proceeding.

**Under the current law, this code section has been removed. However, legal conclusions found in administrative proceedings are exempted from the open records law as attorney-client privilege under O.C.G.A. § 50-18-72(a)(41). The remaining law is applicable.*

Hackworth v. Board of Education for the City of Atlanta

Georgia Court of Appeals

214 Ga. App. 17 (1994)

Hackworth, a producer at an Atlanta television station, requested personnel records from Laidlaw Transit, Inc., a company that contracted with the Board of Education to furnish school bus drivers. The Georgia Court of Appeals held that, although Laidlaw was a private company, the records were subject to disclosure under the Open Records Act. Because Laidlaw maintained the personnel records on behalf of the board in furtherance of the contract to provide safe transportation to students, the records were subject to public inspection.

Central Atlanta Progress, Inc. v. Baker

Georgia Court of Appeals

278 Ga. App. 733 (2006)

These appeals involve the Open Records Act and the refusal of Central Atlanta Progress, Inc., (CAP) and the Metropolitan Atlanta Chamber of Commerce, Inc. (MACOC) to permit the *Atlanta Journal-Constitution* (AJC) to inspect their bids for the NASCAR Hall of Fame and the 2009 Super Bowl game. Both MACOC and CAP refused to disclose the bids, arguing that because the bids were prepared neither by nor on behalf of public agencies, the documents were not subject to disclosure under the Act. The Open Records Act was enacted in the public interest to protect the public from "closed door" politics and the potential abuse of individuals and misuse of power such policies entail. Therefore, the Act must be broadly construed to affect its remedial and protective purposes. The intent of the General Assembly was to encourage public access to information and to promote confidence in government through openness to the public. It is undisputed that the NASCAR bid involved the use of public funds and the future expenditure of substantial public resources. The president of CAP testified that CAP hoped to receive \$25 million from the state "in whatever form," and, furthermore, public officials and employees participated in the preparation and promotion of the bid. The Super Bowl game bid committee also included numerous public officials, including Georgia's governor, Atlanta's mayor, and the general manager of the Georgia Dome, and there was evidence that the bid required the future use of public resources

to be effective and that public entities would provide millions of dollars in “in-kind” services for the Super Bowl. For example, the City of Atlanta pledged to provide additional police, fire, and other services for the event, at an estimated cost of \$1.4 million. Thus, there was sufficient evidence that the corporations were acting “for or on behalf of” public offices or agencies and the Georgia Court of Appeals affirmed the trial court’s judgment in disclosing records relating to the bids.

DUTY OF THE RECORDS CUSTODIAN

Trammell v. Martin
Georgia Court of Appeals
200 Ga. App. 435 (1991)

An individual made the following open records request to a county without asking for the opportunity to inspect the documents prior to copying: “Detailed statement of all billing to the county for legal services rendered by the law firm of Foster & Foster and any other billing to the county by any other person or firm for fiscal year ending June 30, 1990.” In response, the county copied 235 pages of documents pertaining to bills submitted by Foster & Foster and 5,364 pages for all other legal bills submitted to the county, including those for indigent defense. The individual was charged nearly \$2,300 in copying charges. Although the Court of Appeals acknowledged that the individual was responsible for reasonable copying costs, the Court held that the county did not use the most economical means for providing copies of the requested information. Also, the county had previously advised the individual that it would charge \$90 per hour for an attorney to review the requested documents prior to release to determine whether any of the material was exempt from the Open Records Act. The Court held that the Act does not allow the county to charge for the time that an attorney reviews the requested documents to determine whether the documents are exempt from disclosure.

Attorney General Opinion 93-27
1993 Op. Att’y Gen. No. 93-27

In the opinion of the Attorney General, even individuals who are not citizens of the State of Georgia are entitled to access documents under the open records law.

Felker v. Lukemire
Georgia Supreme Court
267 Ga. 296 (1996)

A death row inmate and his attorney sent various open records requests to the Houston County district attorney, requesting the opportunity to view all records pertaining to his case, as well as the files of two other persons. The district attorney’s office complied with the requests. The inmate filed suit requesting that certain video and audiotapes be released pursuant to the Open Records Act. Although the district attorney responded that the tapes were available for inspection, the inmate’s attorney did not take the opportunity to inspect the tapes. In an appeal to the Supreme Court of Georgia, the inmate contended that the district attorney did not comply with the open records request because only one box of files was produced prior to the filing of the suit and that the district attorney made no attempt to locate other files on the inmate and the other persons contained in the request. The Court held that it is not the duty of the district attorney to locate, produce, and inspect all requested files himself or to comb through all the files. The custodian of records, pursuant to the Open Records Act, must only provide reasonable access to the requested files. In the instant case, the district attorney complied by notifying the inmate and the inmate’s attorney that the records would be made available for inspection and copying.

Schulten, Ward & Turner, L.L.P. v. Fulton-DeKalb Hospital Authority
Georgia Supreme Court
272 Ga. 725 (2000)

Schulten, Ward & Turner made an open records request for five years of collection claims for medical goods or services asserted against a Medicare beneficiary or liability insurer where the Fulton-DeKalb Hospital Authority received payments in excess of the amount allowed by Medicare other than payments for deductibles, co-insurance, and non-covered charges. Because the authority did not have an automated or “batch” program to routinely compile and print such records in a single report, the Supreme Court held that the authority was not in violation of the Open Records Act. The law does not require agencies to create or compile records that do not exist.

Jaraysi et al. v. City of Marietta
Georgia Court of Appeals
294 Ga. App. 6 (2008)

Property owners who had begun but not completed construction of a building in Marietta made an open records request for all documents related to their property after the City of Marietta filed an action in municipal court to have the partially constructed building demolished. The city waited nearly one month before verbally informing the property owners’ attorney that “the request was pretrial discovery and ... since the Demolition Action was a criminal matter, pretrial discovery was not permitted.” In the open records action, the city merely cited O.C.G.A. § 50-18-72 as authority for the exemption. Because the city did not provide the denial of the open records request in writing with a properly cited open records exemption (i.e., that included the code section, subsection and paragraph) within three business days of the open records request, the Court of Appeals found in favor of the property owners.

GENERAL REQUIREMENTS

Hardaway Company v. Rives
Georgia Supreme Court
262 Ga. 631 (1992)

According to the Georgia Supreme Court, when examining an open records case, the first inquiry is whether the requested documents are public records. Second, if the documents are public records, the court must determine whether the records are exempt from disclosure. The Court held that any statutory exemption to the Open Records Act must be narrowly construed.

Smith v. DeKalb County et al.
Georgia Court of Appeals
288 Ga. App. 574 (2007)

After a requestor sought election documents from DeKalb County under the Open Records Act, the Secretary of State sought a permanent injunction preventing the county from releasing a CD-ROM containing the requested documents. The CD-ROM contained passwords, encryption codes, and other security information, which could compromise election security. The custodian of the CD-ROM created by an election superintendent had to maintain it under seal following the election for at least 24 months, unless otherwise directed by a superior court. In this case, the superior court had not ordered that the seal be lifted, so the records were properly exempted from the Open Records Act under O.C.G.A. § 50-18-72(a)(25)(A)(iv). Although the requestor argued that the state could copy the CD-ROM without including such information, O.C.G.A. § 50-18-70(j) provided that an agency was not required to create records that were not in existence at the time of the request.

Griffin Industry, Inc. v. Georgia Department of Agriculture
Georgia Court of Appeals
313 Ga. App. 69 (2011)

Griffin Industry, Inc., requested the Department of Agriculture's e-mail correspondence concerning Griffin over a two-year period. The Department only produced three e-mails. The Department apparently had deleted any other e-mails. While it was possible that there may still be some e-mails responsive to the request on 31 backup tapes, it was estimated that the cost to pull all of the data and restore it to the e-mail server would range from \$37,000 to \$2.8 million in a laborious and time-intensive procedure involving hardware and software changes. The Court of Appeals held that the requested records did not exist and the Department did not have to re-create them.

Chua v. Johnson
Georgia Court of Appeals
336 Ga. App. 298 (2016)

A convicted felon sought to require a district attorney to provide a copy of a specific document under an open records request that was related to a criminal prosecution. The district attorney responded timely and set forth the legal basis for denial as attorney work product. However, the district attorney failed to include the citation to the applicable exemption as required by O.C.G.A. § 50-18-71. This technical failure did not automatically entitle the requestor to the document. The trial court would have to conduct an evidentiary hearing to determine the status of the document.

COPYING CHARGES AND ADMINISTRATIVE COSTS

Trammell v. Martin
Georgia Court of Appeals
200 Ga. App. 435 (1991)

An individual made the following open records request to a county without asking for the opportunity to inspect the documents prior to copying: "Detailed statement of all billing to the county for legal services rendered by the law firm of Foster & Foster and any other billing to the county by any other person or firm for fiscal year ending June 30, 1990." In response, the county copied 235 pages of documents pertaining to bills submitted by Foster & Foster and 5,364 pages for all other legal bills submitted to the county, including those for indigent defense. The individual was charged nearly \$2,300 in copying charges. Although the Court of Appeals acknowledged that the individual was responsible for reasonable copying costs, the Court held that the county did not use the most economical means for providing copies of requested information. Also, the county had previously advised the individual that it would charge \$90 per hour for an attorney to review the requested documents prior to release to determine whether any of the material was exempt from the Open Records Act. The Court held that the Open Records Act does not allow the county to charge for the time that an attorney reviews the requested documents to determine whether the documents are exempt from disclosure.

McBride v. Wetherington
Georgia Court of Appeals
199 Ga. App. 7 (1991)

McBride, an inmate, filed a pauper's affidavit requesting that the 25¢ per page copying fee for files that he requested under the Open Records Act be waived. However, the Georgia Court of Appeals held that the open records law does not require that the copy charges be waived when a pauper's affidavit is filed.

McFrugal Rental of Riverdale, Inc. v. Garr
Georgia Supreme Court
262 Ga. 369 (1992)

McFrugal sought inspection of the minutes of the meetings of the Riverdale city council. The city manager agreed to allow the inspection upon the payment of a \$13.62 per hour fee to cover the cost of a temporary employee to supervise McFrugal. The Supreme Court acknowledged that the Open Records Act authorizes charging of fees for access to public records. However, because such fees constitute a burden on the public's right of access, the fee authorization must be narrowly construed to allow the imposition of fees only when a citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden. Thus, a fee may not be imposed when a citizen seeks only to inspect records that are routinely subject to public inspection, such as deeds, ordinances, or zoning maps. Furthermore, the records custodian must bear the burden of demonstrating the reasonableness of any fee imposed.

Powell v. VonCanon
Georgia Court of Appeals
219 Ga. App. 840 (1996)

VonCanon filed an open records request for certain real estate records held in the offices of the county commissioner, the tax commissioner, the tax assessor and the superior court clerk. Although the county officials agreed that VonCanon was entitled to the documents, there was disagreement over how much could be charged for responding to the request. Ordinarily, under the Open Records Act, the county may only charge the actual cost of the computer disk or tape on to which the information is transferred and the hourly wage of the lowest-paid, full-time employee who is capable of responding to the request with no charge for the first 15 minutes of work. However, the Court recognized that another statute, O.C.G.A. § 15-6-96 authorizes the superior court clerk to charge more than the actual cost.

Georgia Emission Testing Company v. Reheis
Georgia Court of Appeals
268 Ga. App. 560 (2004)

Georgia Emission Testing Company (GETCo) made an Open Records Act request to the Environmental Protection Division of the Georgia Department of Natural Resources (EPD) and the Department of Revenue (DOR) for information related to emissions testing. In response, the defendant answered that a single report containing the requested information did not exist. They offered to provide electronic access to the requested records by downloading tables from the database to CD's. GETCo made a second request through discovery in related lawsuit with EPD and DOR. The director responded by stating that responding to the request would require an outside contractor to design and create a special report. Estimates of the report amounted to over \$13,000 and involved generating data, collecting the data, and providing a printed report. The trial court ordered the requested report to be produced and ordered the cost of generating and producing the report to be split between the parties. On appeal, the Court found that since the requested report was relevant to the issue of possible damages, the trial court did not abuse its discretion in ordering the report to be produced. However, on the issue of splitting costs, the court reversed requiring the parties to split discovery costs.

Exceptions to the Open Records Act

ATTORNEY-CLIENT PRIVILEGE

Bogle v. McClure
U.S. Court of Appeals, Eleventh Circuit
332 F.3d 1347 (2003)

A memorandum was prepared by counsel for Fulton County and sent to two of the appellants providing legal advice regarding personnel organization. The document was not designated either “privileged” or “confidential.” An action concerning race discrimination with a public library system was brought. The issue arose whether the memorandum was privileged. The Court noted that the party invoking the attorney-client privilege has the burden of proving that an attorney-client relationship existed and that the particular communications were confidential. To determine if a particular communication is confidential and protected by the attorney-client privilege, the privilege holder must prove the communication was (1) intended to remain confidential and (2) under the circumstances was reasonably expected and understood to be confidential. In admitting the memorandum, the district court found that the memorandum might or might not have fallen with the attorney-client privilege exemption to the Open Records Act. Nonetheless, in upholding the trial court’s decision, the 11th Circuit agreed that the fact that the memorandum was arguably a public record under the Open Records Act buttressed the district court’s ruling and supported the notion that it was not reasonable to assume that the memorandum was confidential.

Decatur County v. Bainbridge Post Searchlight, Inc.
Georgia Supreme Court
289 Ga. 706 (2006)

The Decatur County Grand Jury forwarded presentments to the county attorney questioning how the county commissioners handled vacation and overtime for their employees. The commissioners met with their county attorney to discuss the grand jury presentments. The executive session affidavit stated that the closed session was devoted to matters covered by an unspecified exception to the Open Meetings Act. *The Bainbridge Post Searchlight, Inc.*, a local newspaper made two requests for the grand jury presentments discussed in the meetings and was denied both times. The county claimed attorney-client privilege as the basis for the closed meeting. On appeal, the Court observed that there was no pending litigation or threatened litigation. The presentments merely questioned the practices of the commissioners and thus the county commissioners did not qualify under the attorney-client exception. The Court affirmed the county’s violation of the Open Records Act.

ATTORNEY WORK PRODUCT

Hall v. Madison
Georgia Supreme Court
263 Ga. 73 (1993)

The Supreme Court of Georgia noted that the request for the district attorney’s *voir dire* notes were attorney work product falling within an exception to the Open Records Act.

Fulton DeKalb Hospital Authority v. Miller & Billips
Georgia Court of Appeals
293 Ga. App. 601 (2008)

A law firm sued a hospital authority pursuant to the Open Records Act seeking disclosure of allegedly public records maintained by the authority. The firm sought access to all records relating to an internal investigation into allegations of

sexual misconduct by authority employees. The authority supplied some records but withheld tape-recorded interviews, interview notes, and in-house attorney's final report to the general counsel, citing that these records fell within the attorney work product doctrine and were exempt from disclosure. Under the attorney work product doctrine, documents and other tangible things prepared by or for a party by an attorney in anticipation of litigation or for trial do not have to be disclosed. The Court reasoned that reasonable grounds must exist to believe that litigation is probable. The Court of Appeals found that the investigation was not done in preparation for probable litigation. It held that the investigation constituted a routine review of complaint allegations and was no different from investigations ordinarily conducted by the authority's security department, thus the records were subject to disclosure. The fact that an attorney was present during the investigation did not make the reports from the investigation "attorney work product."

INVASION OF PRIVACY

Richmond County Hospital Authority v. Southeastern Newspaper Corp.
Georgia Supreme Court
252 Ga. 19 (1984)

A newspaper made an open records request for certain information about hospital employees earning more than \$28,000 annually. The Supreme Court held that names, salaries, and job titles must be disclosed under the Open Records Act. The release of such information did not constitute an invasion of privacy.

Dortch v. Atlanta Journal & Atlanta Constitution et al.
Georgia Supreme Court
261 Ga. 350 (1991)

The *Atlanta Journal* and the *Atlanta Constitution* made an open records request to obtain access to all 1990 cellular telephone bills paid by the City of Atlanta. The city complied, but deleted all telephone numbers called from city cellular telephones, as well as the numbers assigned to the city cellular telephones. The Supreme Court held that the telephone numbers should have been released. The publication of unlisted numbers by the city did not constitute the tort of invasion of privacy. Additionally, the court rejected the argument that the deletions were necessary to avoid the prohibitive expense of having the public call officials on the cellular telephones because the Open Records Act allowed for no such exemption.

Fincher v. State
Georgia Court of Appeals
231 Ga. App. 49 (1998)

Following an investigation of claims that Fincher sexually harassed a co-worker, the State Board of Pardons and Paroles released documents used in the investigation that were contained in Fincher's personnel file. The Court found that the documents were public records and did not violate Fincher's privacy. The public's interest in disclosure of a public employee's alleged improper activities in the performance of his job outweighed Fincher's interest in nondisclosure.

Joseph Gooden v. Pat Carson and Forsyth County
U.S. District Court Northern District of Georgia
2006 U.S. Dist. Lexis 28838 (2006)

After Gooden was fired from Forsyth County for failing a drug test, he appealed his termination to the Forsyth County Civil Service Board. The board held a closed meeting and upheld the termination. After Gooden's termination, Forsyth County received an open records request from a private citizen and the press for materials related to Gooden's termination, which were released by the county. Gooden sued the human resources director and Forsyth County claiming that they violated federal law by disclosing the results of his drug test, private personnel information, and an audiotape of his closed hearing. The Court held that the information released by the county was not exempted by the Open Records Act. Since the records relating to the employment investigation were not released to the public prior to the conclusion of that investigation, their release by the county was proper and did not constitute an invasion of privacy.

LAND ACQUISITION

Black v. Georgia Department of Transportation
Georgia Supreme Court
262 Ga. 342 (1992)

The Supreme Court held that appraisals made by the Department of Transportation (DOT) of property to be condemned are exempt from the open records requirement until the property is "acquired." The Court held that the DOT "acquires" the property for purposes of the Open Records Act only after litigation involving condemnation proceedings is complete.

LAW ENFORCEMENT

Kilgore v. R.W. Page Corporation
Georgia Supreme Court
261 Ga. 410 (1991)

The Supreme Court held that a coroner's inquest must be open to the public, rejecting the coroner's contention that the inquest could be closed because it involved a pending criminal investigation. The Court opined that because the coroner has no law enforcement authority and is not a law enforcement agent, the coroner's inquest is not exempt from the open meetings law.

McBride v. Wetherington
Georgia Court of Appeals
199 Ga. App. 7 (1991)

McBride filed a written open records request for the investigatory files of the crimes for which he had been convicted. The day following receipt of the request, the chief of police informed McBride that disclosure of the records was not required because there was continuing litigation in the case. The Court of Appeals found no evidence that the chief deliberately denied access to the records. Once the investigation was concluded, the chief offered to provide the requested copies at 25¢ per page, even though the inmate filed a pauper's affidavit requesting that the fee be waived. However, the Court held that the open records law does not require that the copy charges be waived when a pauper's affidavit is filed.

Doe v. Board of Regents of the University System of Georgia

Georgia Court of Appeals
215 Ga. App. 684 (1994)

Doe filed a rape incident report with the University of Georgia police department. The Court of Appeals held that, while the incident report could be released under the Open Records Act, Doe's name and identity must be redacted. The release of Doe's name was protected by the rape victim confidentiality statute, O.C.G.A. § 16-6-23. The Court refused to accept the trial court's conclusion that the rape victim confidentiality statute did not apply because Doe's allegations of rape were false.

Lebis v. State

Georgia Court of Appeals
212 Ga. App. 481 (1994)

The Court of Appeals held that, unlike arrest and incident reports, the investigative notes of law enforcement officers and prosecuting attorneys are exempt from disclosure under the open records law.

Atlanta Journal & Constitution v. City of Brunswick

Georgia Supreme Court
265 Ga. 413 (1995)

The Supreme Court of Georgia held that the *Atlanta Journal and Constitution* and the *Florida Times-Union* could have limited access to certain police reports of sexual assaults in the City of Brunswick, holding that the Open Records Act did not require full disclosure of the police incident reports if disclosure would reveal confidential information or endanger lives. While the act requires disclosure of initial incident and police reports, it exempts portions of police records that would disclose confidential sources or information endangering individuals.

Athens Newspapers, LLC v. Unified Government of Athens-Clarke County

Georgia Supreme Court
284 Ga. 192 (2008)

An Athens newspaper requested the police records of an unsolved rape and murder case from 1992. The county denied the request, claiming that the investigation was pending. The Supreme Court held that the records were still considered part of a pending investigation and thus subject to the statutory exemption in the Open Records Act. The Court placed strong emphasis on the fact that "sensitive information, such as the details of a crime ... should be kept confidential until the case is solved."

Media General Operations, Inc. v. St. Lawrence

Georgia Court of Appeals
337 Ga. App. 428 (2016)

A suspect died while in the custody of the sheriff. Following investigation into the matter, nine deputies were fired and two were indicted. A TV station then submitted an open records request under O.C.G.A. § 50-18-70 for records pertaining to the deceased inmate. The sheriff refused the request asserting the 'on-going criminal investigation' exemption from disclosure under O.C.G.A. § 50-18-72(a)(4). The TV station asserted that the exemption did not apply to an agency that was itself the subject of the investigation. The sheriff and the district attorney filed a declaratory judgment action seeking a declaration that the records were exempt. The trial court issued the declaration. The Court of Appeals affirmed. The agency here, the sheriff's office, was not under investigation. Rather, individuals were. Agency is not synonymous with employees so the exemption applies.

TRADE SECRETS

Attorney General Opinion 89-35

1989 Op. Att'y Gen. No. 89-35

Information provided to the Department of Community Affairs in connection with the Community Development Block Grant Program is not exempt from disclosure unless such information constitutes a trade secret.

Douglas Asphalt Co. v. E.R. Snell Contractor, Inc.

Georgia Court of Appeals

282 Ga. App. 546 (2006)

E.R. Snell Contractor, Inc. brought action seeking to stop the Department of Transportation (DOT) from releasing certain documents to Douglas Asphalt Co. in response to Douglas Asphalt's Open Records Act request. The Court found that E.R. Snell's asphalt formulas requested by Douglas Asphalt did constitute a trade secret because the formulas were not readily ascertainable or easy to duplicate independently. The Court also rejected Douglas Asphalt's contention that the formulas did not fall under the Open Records Act exemption. Douglas Asphalt argued that E.R. Snell was not "required by law" to submit the formulas because the voluntarily contracted with DOT. The Court instead held that, while E.R. Snell was not required to enter into the contract, once they did, they were required by law to submit their formulas to DOT; therefore, the exemption applied.

United Healthcare of Georgia, Inc. v. Georgia Department of Community Health

Georgia Court of Appeals

293 Ga. App. 84 (2008)

The South Georgia Physician's Association and the Medical Association of Georgia made an open records request for certain records held by the Department of Community Health (DCH) and United Healthcare of Georgia, its third-party administrator that administered the State Health Benefit Plan (SHBP). The request was for all fee schedules for SHBP and all executed (and template) contracts between United Healthcare and the various physicians and hospitals in Georgia providing services for the SHBP, as well as all related correspondence between the DCH and United HealthCare. United Healthcare filed an action to enjoin DCH from these documents available, alleging that they were trade secrets. The Court of Appeals remanded the case back to the trial court to determine whether the requested documents met the trade secrets test established in law.

State Road and Tollway Authority v. Electric Transaction Consultants Corp.

Georgia Court of Appeals

306 Ga. App. 487 (2010)

Electric Transaction Consultants filed an action to enjoin the State Road and Tollway Authority from releasing its bid on the Authority's "Request for Proposal for the Tolling Systems Integrator/I-85 Express Lanes and Back Office Project" under the Open Records Act, alleging that the bid contained trade secrets. According to Electric Transaction Consultants, the bid contained specific detailed technical and pricing information that is proprietary and confidential. The company further alleged that information in the bid and the method by which the company allocated costs and pricing for the services it provided was unique to the company and provided economic value to the company. The Court of Appeals held that the bidder failed to provide any evidence to support its assertion that the detailed pricing information in its unredacted price proposal would enable a competitor to deduce how the bidder designed its systems and, therefore, merited protection under the trade secrets exemption.

TAX MATTERS

Attorney General Opinion 95-22

1995 Op. Att'y Gen. No. 95-22

According to the Attorney General, the board of tax assessors and the board of tax equalization must comply with the open meetings law. All official proceedings and actions of the board must be conducted in open meetings. However, either board may close a meeting to discuss matters that are considered confidential by the law. Additionally, the boards may preserve the confidentiality of taxpayer records as provided by O.C.G.A. § 48-5-314.

City of Atlanta v. Corey Entertainment, et al. Fouch v. Corey Entertainment, et al.

Georgia Supreme Court

278 Ga. 474 (2004)

The Supreme Court affirmed the grant of summary judgment to Corey Entertainment in a suit seeking compliance with the Open Records Act. Corey, a competitor of Fouch's, and Fouch were both bidding on a lucrative airport advertising contract. A copy of Fouch's tax records had been submitted to the City of Atlanta in an effort to be certified as a Disadvantaged Minority Business (DMB). The contract was awarded to Fouch. Corey, in challenging the award, sought a copy of the tax records submitted in support of the DMB designation. The city and Fouch claimed that federal regulations prohibited such disclosure. The trial court disagreed and ordered the tax returns disclosed. On appeal, the Court held that confidentiality of the tax returns was not absolute and that Corey sought it for the narrow purpose of determining whether Fouch was properly certified as a disadvantaged business. The Court distinguished the decision in Corey from *Bowers v. Shelton*, 265 Ga. 247 (1995) to the extent that the requestors in Bowers failed to show how their request for Shelton's tax returns related to a "legitimate public inquiry."

MISCELLANEOUS

Dooley v. Davidson

Georgia Supreme Court

260 Ga. 577 (1990)

An open records request was made to review all documents associated with the income paid by the University of Georgia to its coaches. The Supreme Court held that the following documents were subject to disclosure: (1) those documents prepared or maintained for the purpose of a duty imposed upon the coaches by the university in the course of operation of the university; (2) those documents received in the course of operation of the university; and (3) those documents that relate to an official function of the university. For instance, contracts between coaches and suppliers of sports equipment and apparel directly affected performance of the coaches' official duties and were otherwise related to university activities, making them public documents. Likewise, contracts to participate in pre-game or post-game programs on university radio station or television broadcast were public records. However, the Court held that contracts relating to a private activity that are not connected to the university, not in conflict with the performance of an official duty, and not in the course of operation of the university are not public records and are not required to be disclosed. Examples of such contracts include those contracts to make speaking appearances on behalf of a manufacturer or third party, as well as those contracts with radio networks to broadcast sporting events not involving the university.

In re Gwinnett County Grand Jury**Georgia Supreme Court****284 Ga. 510 (2008)**

Gwinnett County made a request under the Open Records Act to the Gwinnett County District Attorney and Superior Court Clerk seeking copies of materials used by the grand jury in its civil investigation concerning the dissolution of the Office of Internal Affairs and the transfer of responsibilities to the newly created county office, Performance Analysis Division. The court determined that the requested documents and recorded testimony were not court records available for public inspection under Uniform Superior Court Rule 21, in that these records were not included in the presentment made in open court and therefore do not carry the presumption of public access.

Smith v. Northside Hospital, Inc., et al.**Georgia Court of Appeals****336 Ga. App. 843 (2016)**

This case involves the question of whether documents of a private hospital corporation constitute public records within the meaning of the Open Records Act (ORA). Smith, a partner in a law firm, made a request under the ORA to the Fulton County Hospital Authority (FCHA) and Northside Hospital Inc. (NHI), a private nonprofit corporation created by FCHA, for statements and documents relating to acquisitions the NHI was making to acquire four privately owned physicians groups. The FCHA responded that it had no such records and the NHI asserted that it was not subject to the ORA, and, even if it was, the material was exempt from disclosure for numerous reasons. Smith filed a complaint seeking the trial court to compel ORA compliance.

The pertinent question was whether the specific requested documents were prepared and maintained or received by the NHI in the performance of a specific service or function on behalf of the FCHA. The Court determined that the FCHA retained only limited powers, none of which involved acquiring physician practices, that the FCHA further did not possess or control the documents, and the NHI did not function under the direction and control of the FCHA. Additionally, no public funds were used to finance the transactions and there was no involvement of any public officials. Finally, the Court noted that simply performing some task or function that has an indirect public benefit or which aids the public as a whole does not transform a private entity's records into public records. The trial court granted the NHI's motion for involuntary dismissal and the Court of Appeals affirmed.

Schick v. Board of Regents of the University System of Georgia**Georgia Court of Appeals****334 Ga. App. 425 (2015)**

This case involves the applicability of exemptions of the open records law to a variety of records relating to a budget shortfall at a member institution of the board of regents. The Court of Appeals reversed the trial court because the exemption relied upon, O.C.G.A. § 50-18-72(a)(4) did not apply. The trial court was allowed on remand to conduct in-camera proceedings to determine if the withheld documents could be exempt under another exemption. Further, no attorneys' fees would be allowed under O.C.G.A. § 50-18-73(b) since there was substantial justification for the violation. Here, employees worked nights and holidays trying to respond as expeditiously as possible to the voluminous requests.

Deal v. Coleman
Supreme Court of Georgia
294 Ga. 170 (2013)

This case involves a question of whether an amendment to the Open Records Act (ORA) applies to litigation ongoing at the time of the amendment. An automaker located a facility in Georgia. A state technical college provided training as part of a Quick Start program. Plaintiffs filed an ORA request to the technical college system for records regarding the hiring practices of the automaker. The request was refused. Litigation ensued. While the suit was pending, the ORA was specifically amended by adding paragraph (47) in subsection (a) of O.C.G.A. § 50-18-72 to provide a specific exemption for certain Quick Start records. The trial court did not decide the extent to which the new exemption applied to the requested records and concluded that it would be unconstitutional to apply the new exemption in a pending lawsuit. On appeal, the Supreme Court concluded that the new exemption applies by its own terms and that application in the pending case is constitutional. The Court noted that retroactive application is disfavored unless there is some clear indication that the statute is intended to be applied retroactively. In the amendment at issue here, the text clearly states that it is to apply to requests made prior to the effective date of the amendment. Thus, the question becomes whether the constitution would permit such application. The Court concludes that it is permissible since no vested 'private' rights are injuriously affected. The rights in this case are 'public' rights which can be modified by the legislature prospectively or retroactively as it sees fit. The Court indicates that the ORA confers a public right to the people as a whole and as such, it could not vest in any particular persons.

CRIMINAL MATTERS

Crawford v. Head
U.S. Court of Appeals, Eleventh Circuit
311 F.3d 1288 (2002)

In a murder case, the defendant claimed relief from his conviction because the prosecution failed to provide him with exculpatory evidence. This claim was based on a GBI report that was obtained during state habeas proceedings pursuant to the Open Records Act. This report concerned a search performed in relation to a criminal investigation. The district court reiterated the Georgia Supreme Court's holding that once the trial has been held, the conviction affirmed on direct appeal, and any petition or petitions for certiorari denied, the investigatory file in a criminal case should be made available for public inspection.

Stone v. State
Georgia Court of Appeals
257 Ga. App. 492 (2002)

In a criminal bench trial for a speeding violation, the defendant requested documents from the Henry County Police Department. Although it is not clear what response the defendant received, the defendant alleged that the police department was in violation of the Open Records Act by failing to provide the documents in a timely manner needed to prepare the defense. The Court, in refusing to reverse the conviction on speeding charges, held that the question of compliance with the Open Records Act was a matter separate from the criminal proceeding and, although a criminal defendant may have access to government records as a member of the public, the access is not based on his status as criminal defendant.

REMEDIES / ATTORNEYS' FEES

Tobin v. Cobb County Board of Education
Georgia Supreme Court
278 Ga. 663 (2004)

Tobin filed a petition for mandamus in the Superior Court of Cobb County to compel defendants to permit the inspection and copying of records of a high school chorus booster club. A mandamus nisi issued. At the ensuing hearing, defendants urged the court to dismiss the petition on the ground that petitioners had an adequate remedy at law, the Open Records Act. The superior court dismissed the petition. The Court agreed that the Open Records Act provides a remedy which is as complete and convenient as mandamus.

Wallace v. Greene County
Georgia Court of Appeals
274 Ga. App. 776 (2005)

Wallace filed a complaint after his termination from employment against Greene County, the county manager, and the county attorney for a violation of the Open Records Act alleging that the county failed to provide a timely response to his request for a copy of his personnel record. The case was dismissed against the county attorney since the open records request was never made to him. The Court held that the Open Records Act does not permit recovery of compensatory or punitive damages. The Court held that to recover attorneys' fees, a plaintiff must first show the county violated the Open Records Act by not producing the requested records before the suit was filed. Further, if a violation did in fact occur, Wallace must show that the county lacked substantial justification for the violation. The Court concluded that Wallace had satisfied the first prong and remanded the case to the trial court for a determination as to the second prong.

City of Carrollton v. The Information Age, Inc.
Georgia Court of Appeals
306 Ga. App. 891 (2010)

The Information Age, Inc., submitted an open records request to the City of Carrollton to inspect documents related to non-health insurance claims and payments made by the city over an 11-month period. The City responded that these requests were too "vague" and "overly broad and unduly burdensome." The Court found that the requests were plain and that the city should have provided the documents.



Open Meetings and Open Records

Statutory References

There are a number of statutory references that relate to the open meetings and open records law. Below and on the next page you will find the main references for each. Note that the most recent version of the code sections referred to can be found online free of cost on the General Assembly's website located at www.lexisnexis.com/hottopics/gacode/Default.asp.

Open Meetings Statutes

O.C.G.A. § 50-14-1. General open meetings law requirements (notice requirements, audio and video recordings, teleconferences, access to minutes, etc.)

O.C.G.A. § 50-14-2. Description of certain privileges that are not repealed by the open meetings law

O.C.G.A. § 50-14-3. Meetings and proceedings excluded from the open meetings law

O.C.G.A. § 50-14-4. Meeting closure and executive sessions procedures

O.C.G.A. § 50-14-5. Enforcement of the open meetings law

O.C.G.A. § 50-14-6. Violations and penalties of the open meetings law

O.C.G.A. § 16-11-34. Preventing or disrupting lawful meetings, gatherings, or processions

O.C.G.A. § 36-1-25. Official meeting minutes of the board of commissioners

O.C.G.A. § 38-3-54. Emergency meeting location requirements for local governments

O.C.G.A. § 38-3-55. Emergency meeting location proclamation authorization

Open Records Statutes

- O.C.G.A. § 50-18-70. Definitions and legislative intent of open records law
- O.C.G.A. § 50-18-71. General open records law requirements (access, request timeframe and procedures, records custodian duties and designation, fees and charges, electronic records, etc.)
- O.C.G.A. § 50-18-72. Exempt records
- O.C.G.A. § 50-18-73. Enforcement of open records law (attorneys' fees, litigation expenses, defenses)
- O.C.G.A. § 50-18-74. Penalties for violations of the open records law and procedures for prosecution
- O.C.G.A. § 50-18-75. Confidential communications between the Office of Legislative Counsel and certain elected officials and staff
- O.C.G.A. § 50-18-76. Exemption of vital records
- O.C.G.A. § 50-18-77. Exemption of requirements and fees for certain record requests in conjunction with an ongoing administrative, criminal, or tax investigation
- O.C.G.A. § 15-1-10. Court records removal and storage
- O.C.G.A. § 36-76-6(d). Exemption of cable and video provider financial information related to franchise fees
- O.C.G.A. § 45-11-1. Offenses of public records, documents, and other items
- O.C.G.A. § 50-18-90. Georgia Records Act
- O.C.G.A. § 50-18-91. Georgia Records Act Definitions
- O.C.G.A. § 50-18-92. State Records Committee (purpose, composition, duties, retention schedules, etc.)
- O.C.G.A. § 50-18-99. Local government records management program requirements
- O.C.G.A. § 50-18-102. Proper and unlawful records disposal and destruction
- O.C.G.A. § 50-18-103. Record storage compliance
- O.C.G.A. § 50-29-2. GIS records contract and fee requirements

Summary of
Open Meetings
Law Exemptions



Exemptions to the Open Meetings Act

(Note: The following is a very brief description of the open meetings and open records laws. Before relying on any exception, the actual text should be carefully reviewed since many are subject to specific conditions or other limitations.)

O.C.G.A. § 15-11-700(j)	Juvenile court hearings
O.C.G.A. § 15-16-10(a)(10)	Meetings regarding courthouse security plans
O.C.G.A. § 19-7-53	Paternity hearings
O.C.G.A. § 19-15-5	Meetings of child abuse protocol committee or Georgia Child Facility Review Panel
O.C.G.A. § 33-37-10	Delinquency proceedings
O.C.G.A. § 20-2-757	Meetings of public school disciplinary tribunals
O.C.G.A. § 50-14-1(a)(3)(B)	Inspecting facilities or property where no other official action is discussed or taken
O.C.G.A. § 50-14-1(a)(3)(B)	Attending statewide, multijurisdictional, or regional meetings or training where no official action is taken
O.C.G.A. § 50-14-1(a)(3)(B)	Meetings with state or federal legislative or executive officials at state or federal offices where no official action is taken
O.C.G.A. § 50-14-1(a)(3)(B)	Traveling together where no official business, policy, or public matter is formulated, presented, discussed, or voted upon
O.C.G.A. § 50-14-1(a)(3)(B)	Attending social, civic, ceremonial, or religious events where no official business, policy, or public matter is formulated, presented, discussed, or voted upon
O.C.G.A. § 50-14-2(1)	Attorney-client privilege
O.C.G.A. § 50-14-2(2)	Confidential tax matters
O.C.G.A. § 50-14-3(a)(1)	Staff meetings held for investigative purposes
O.C.G.A. § 50-14-3(a)(2)	Votes of State Board of Pardons and Paroles
O.C.G.A. § 50-14-3(a)(3)	Meetings of Georgia Bureau of Investigation
O.C.G.A. § 50-14-3(a)(4)	Adoptions and related proceedings
O.C.G.A. § 50-14-3(a)(5)	Mediation proceedings
O.C.G.A. § 50-14-3(a)(6)(A)	Meetings of any medical staff committee of a public hospital
O.C.G.A. § 50-14-3(a)(6)(B)	Meetings of a governing authority or committee of a public hospital for peer or medical review per O.C.G.A. § 31-7-15
O.C.G.A. § 50-14-3(a)(6)(C)	Meetings of hospital authorities or committees when discussing revoking staff privileges or granting an abortion
O.C.G.A. § 50-14-3(7)	Incidental conversation
O.C.G.A. § 50-14-3(8)	E-mail communications

- O.C.G.A. § 50-14-3(b)(1) Meetings when discussing acquisition, disposal, sale, or lease of real estate
- O.C.G.A. § 50-14-3(b)(1) To authorize settlement of any matter relative to the attorney-client privilege per O.C.G.A. § 50-14-2(1)
- O.C.G.A. § 50-14-3(b)(2) Meetings discussing appointment, employment, compensation, disciplinary hiring, action or dismissal, or periodic evaluation or rating of a public officer or employee
- O.C.G.A. § 50-14-3(b)(3) Meetings of boards of trustees or investment committees of a public retirement system when discussing investment
- O.C.G.A. § 50-14-3(b)(4) Meetings when discussing records or portions of records exempt from public disclosure per O.C.G.A. § 50-18-72

Summary of
Open Records
Law Exemptions



Exemptions to the Open Records Act

O.C.G.A. § 2-7-61	Records of pesticide delivery, movement, or possession
O.C.G.A. § 2-7-67	Information concerning the individual distribution of pesticides
O.C.G.A. § 2-7-68(b)	Trade secrets or commercial information obtained from application for registration of pesticide
O.C.G.A. § 2-8-69	Information maintained by the Department of Agriculture in the maintenance and inspection of books and records of processors and distributors of peanuts
O.C.G.A. § 2-8-29(b)	Information maintained by the Department of Agriculture in the maintenance and inspection of books and records
O.C.G.A. § 2-13-5	Trade secrets concerning commercial feeds
O.C.G.A. § 7-1-70	Department of Banking and Finance Records
O.C.G.A. § 7-1-684(d)	Conviction data for individuals selling or issuing checks
O.C.G.A. § 7-1-625(c)	Bank examination records
O.C.G.A. § 7-1-689	Information obtained in the examination or investigation of individuals licensed to sell payment instruments or transmit money
O.C.G.A. § 7-1-702.2(d)	Georgia Crime Information Center applications for check-cashier license
O.C.G.A. § 7-1-703(d)	Conviction data for individuals cashing checks, drafts, or money orders
O.C.G.A. § 7-1-706	Information obtained in the examination or investigation of individuals licensed to cash payment instruments
O.C.G.A. § 7-1-1004(l)	Mortgage lender and broker investigation conviction data
O.C.G.A. § 7-1-1009	Mortgage lender and broker investigation records
O.C.G.A. § 10-1-207	Trade secrets pertaining to antifreeze
O.C.G.A. § 10-1-404	Information obtained pursuant to an investigation under the Fair Business Practices Act
O.C.G.A. § 10-1-760 <i>et seq.</i>	Trade secrets
O.C.G.A. § 10-9-9(e)	Conviction data of Georgia World Congress Center employees
O.C.G.A. § 12-8-29.2	Information related to secret processes, devices, or methods of manufacture of materials being privately processed by the Environmental Protection Division
O.C.G.A. § 12-8-78	Protected records regarding hazardous waste management
O.C.G.A. § 12-8-184	Pollution prevention and environmental waste reduction reports and plans
O.C.G.A. § 12-9-19	Information relating to secret processes, devices, or methods of manufacture or production obtained in the administration of conservation and natural resources
O.C.G.A. § 12-13-21	Records obtained pursuant to the Georgia Underground Storage Tank Act
O.C.G.A. § 15-6-72(c)	Certain military service records

O.C.G.A. § 15-9-38	Confidentiality of wills
O.C.G.A. § 15-11-40	Records or reports of child abuse
O.C.G.A. § 49-4A-8(d)(2)	Delinquent children records
O.C.G.A. § 15-11-603(d)	Positive HIV test results of delinquent children
O.C.G.A. § 15-11-704	Juvenile court records
O.C.G.A. § 15-11-708	Juvenile law enforcement records
O.C.G.A. § 15-12-67(b)	Deliberations of the grand jury
O.C.G.A. § 15-16-10(a)(10)	Courthouse security plans
O.C.G.A. § 16-11-9	Records that may reflect on the loyalty of any resident received and maintained under the Sedition and Subversive Activities Act of 1953
O.C.G.A. § 16-11-172	Criminal records of individuals transferring or purchasing firearms
O.C.G.A. § 16-12-141.1	Hospital abortion records
O.C.G.A. § 16-13-52	Records on subjects in controlled substance research
O.C.G.A. § 16-13-60	Prescription information
O.C.G.A. § 16-15-11	Georgia Criminal Street Gang Database records
O.C.G.A. § 17-4-20.1	Family violence reports of law enforcement officers
O.C.G.A. § 17-17-14(b)	Crime victims address and telephone number
O.C.G.A. § 19-7-5(i)	Reports of child abuse
O.C.G.A. § 19-7-46.1	Authorization of paternity
O.C.G.A. § 19-8-23(e)	Adoption records
O.C.G.A. § 19-9-7(b)	Address of a victim of family violence
O.C.G.A. § 19-11-30	Insurance information on a dependent child
O.C.G.A. § 19-13-23	Location of family violence shelters
O.C.G.A. § 19-15-6	Child abuse protocol or review committee records
O.C.G.A. § 20-2-210(e)	School superintendents' annual performance evaluations
O.C.G.A. § 20-2-281	Student assessment instruments and individual student results
O.C.G.A. § 20-2-897	Public school teachers' health insurance claim forms and records
O.C.G.A. § 20-2-925	Public school employees' health insurance claim forms and records
O.C.G.A. § 20-3-642	Information or records pertaining to an individual's Georgia Higher Education Savings Plan
O.C.G.A. § 20-14-40	Identifiable individual student performance data, information, and reports
O.C.G.A. § 21-2-225	Applications for voter registration

O.C.G.A. § 21-2-225.1	Address of certain registered electors
O.C.G.A. § 21-2-500	Election records under seal
O.C.G.A. § 23-3-122	Information and evidence provided to the Attorney General in the investigation of taxpayer protection against false claims.
O.C.G.A. § 24-12-2	Raw medical research data
O.C.G.A. § 24-12-12	Patients' medical information
O.C.G.A. § 24-12-20	AIDS information
O.C.G.A. § 24-12-21	AIDS information
O.C.G.A. § 24-12-30	Library user records
O.C.G.A. § 25-2-33(d)	Information relating to an investigation of a fire loss
O.C.G.A. § 25-4-8(c)(1)	Conviction data of applicants for employment as a firefighter
O.C.G.A. § 26-5-17	Drug abuse treatment and education records
O.C.G.A. § 30-5-7	Records pertaining to the abuse, neglect or exploitation of disabled adults or elder persons in the custody of the Department of Human Services
O.C.G.A. § 31-2A-17	Alzheimer's Disease Registry data
O.C.G.A. § 31-2A-18(f)	Information received and kept by the Department of Public Health in administering the Low THC Oil Patient Registry
O.C.G.A. § 31-5-5	Information obtained by the Department of Human Services and county boards of health relating to secret processes, formulas, and methods
O.C.G.A. § 31-7-6	Identifiable individual data in patient care research
O.C.G.A. § 31-7-75.2	Hospitals' potentially commercially valuable plans
O.C.G.A. § 31-7-133	Peer review records
O.C.G.A. § 31-7-285	Healthcare data provided to the Department of Health
O.C.G.A. § 31-8-58	Identity of complainant in long-term care investigation
O.C.G.A. § 31-8-86	Identities in an investigation of the abuse or exploitation of residents of long-term care facilities
O.C.G.A. § 31-8-165(c)	Books and records pertaining to nursing home provider fees
O.C.G.A. § 31-8-174(c)	Books and records pertaining to care management organization quality assessment fees
O.C.G.A. § 31-8-179.3	Books and records pertaining to Medicaid financing (repealed, effective June 30, 2017)
O.C.G.A. § 31-9B-3	Abortion physician reports
O.C.G.A. § 31-10-25	Vital records including birth, death, divorce, and marriage certificates
O.C.G.A. § 31-10-26	Vital records, voluntary acknowledgement of paternity and legitimization
O.C.G.A. § 31-11-51(e)	Conviction data for emergency medical technicians

O.C.G.A. § 31-12-2	Data and reports on certain diseases
O.C.G.A. § 31-12-3.1(e)	Vaccination records
O.C.G.A. § 31-21-3(c)	Information regarding a deceased's infectious or communicable disease
O.C.G.A. § 33-1-16(e)	Evidence in an insurance investigation
O.C.G.A. § 33-3-21.3	Financial analysis ratios and examination synopses in annual filings submitted by the National Association of Insurance Commissioners' Insurance Regulatory Information System
O.C.G.A. § 33-9-20	Insurance company statistics maintained under statistical plans compatible with the rating plans used
O.C.G.A. § 33-11-62	Certain investment policy information for life, accident, sickness, property, and casualty insurers
O.C.G.A. § 33-13-8	Information and documents obtained during insurance holding company system examination or investigation
O.C.G.A. § 33-21-23	Medical information obtained by health maintenance organization
O.C.G.A. § 33-23-5.1	Conviction data for insurance agents, counselors, and adjusters
O.C.G.A. § 33-24-59.4	Medical information obtained from pharmacies
O.C.G.A. § 33-37-10	Delinquency proceeding records
O.C.G.A. § 31-51-5	Records produced in relation to the Low THC Oil Research Program
O.C.G.A. § 33-56-8	Risk-based capital reports and plans
O.C.G.A. § 33-59-7	Individual identification data obtained through a life settlement examination
O.C.G.A. § 33-59-11	Medical information obtained in a life settlement transaction
O.C.G.A. § 33-59-14(e)	Documents and evidence in a fraudulent life insurance settlement
O.C.G.A. § 33-59-14(g)	Anti-fraud life insurance settlement plans
O.C.G.A. § 33-62-3	Support documents submitted with the Property and Casualty Actuarial Opinion
O.C.G.A. § 34-8-121(a)	Department of Labor information
O.C.G.A. § 34-8-122(a)	Communications between employer and employee and/or the Department of Labor
O.C.G.A. § 34-9-12(b)	Workers Compensation Board records
O.C.G.A. § 34-9-61(b)	Workers Compensation Board employers' names and employers' reports
O.C.G.A. § 34-9-208(f)	Workers Compensation rating data
O.C.G.A. § 34-9-388(c)	Workers Compensation Guaranty Trust Fund reports
O.C.G.A. § 34-9-413	Drug-Free Workplace drug test results
O.C.G.A. § 34-9-420	Workers Compensation drug test results
O.C.G.A. § 35-3-34	Access to criminal history records by private entities

O.C.G.A. § 35-3-35	Access to criminal history records by government entities
O.C.G.A. § 35-3-38	Unauthorized disclosure of criminal history records
O.C.G.A. § 35-3-64	Antiterrorism Task Force investigative efforts and agent identities
O.C.G.A. § 35-3-162	DNA analysis results
O.C.G.A. § 35-8-15(b)	Peace officer records
O.C.G.A. § 36-76-6(d)	Cable and video service provider financial information
O.C.G.A. § 36-82-141	Repayment obligation records
O.C.G.A. § 36-92-4(c)	Reports and evaluations of claims adjusters on accidents involving county owned motor vehicles
O.C.G.A. § 37-1-53	Department of Human Services information received from persons, firms, etc., relating to secret processes, formulas, and methods
O.C.G.A. § 37-2-11.2(b)	Mental health records
O.C.G.A. § 37-2-38	Identity of complainant in mental disability investigation
O.C.G.A. § 37-2-45	Peer review records and medical review group findings and recommendations
O.C.G.A. § 37-3-166(a)	Clinical records related to mental illness
O.C.G.A. § 37-3-167(d)	Court records relating to treatment of mental illness
O.C.G.A. § 37-4-125(a)	Court records relating to developmental disabilities
O.C.G.A. § 37-7-166	Clinical records for treatments of alcoholics and drug abusers as medical patients
O.C.G.A. § 37-9-7	Patient asset information
O.C.G.A. § 38-3-22.1	Terrorism safety plans
O.C.G.A. § 40-2-130(c)	Motor vehicle registration records to maintained by the state revenue commissioner
O.C.G.A. § 40-3-23(d)	Motor vehicle records
O.C.G.A. § 40-5-2(b)	Individual driver's information maintained by the Department of Drivers Services
O.C.G.A. § 40-6-20(f)	Recorded images from red light cameras
O.C.G.A. § 40-6-163(d)	Recorded images from a school bus camera
O.C.G.A. § 42-1-7(c)	Information regarding communicable diseases of inmates
O.C.G.A. § 42-1-11(e)	Crime victim notification
O.C.G.A. § 42-5-36(a)	Information supplied by inmates who cooperate in remedying abuses and wrongdoing in the penal system
O.C.G.A. § 42-8-40	Statewide probation records
O.C.G.A. § 42-8-108(b)	Records involving private probation companies that contract with local government for services
O.C.G.A. § 42-9-53	Pardons and Paroles Board confidential state secrets

O.C.G.A. § 43-1-19(h)	State examining boards' investigations
O.C.G.A. § 43-3-25.1	CPA applicant information provided to the State Board of Accountancy
O.C.G.A. § 43-34-5.1	All information from the monitoring or rehabilitation of health care professionals furnished by the Georgia Composite Medical Board to certain medical professional organizations
O.C.G.A. § 43-34-7	Applicant information, examination materials, and board deliberations not included in the official minutes, for the Georgia Composite Medical Board
O.C.G.A. § 43-34-31(d)	Transmitted medical records and patient information of those being medically treated by someone from a foreign jurisdiction
O.C.G.A. § 43-34-290	Records related to death investigations which may be the result of medication administered or prescribed or a procedure performed at a pain management clinic that are sent to the Georgia Composite Medical Board
O.C.G.A. § 43-34A-4	Identity of the person or entity requesting a physician's profile through the Georgia Composite Medical Board
O.C.G.A. § 43-39A-7	Information submitted by real estate appraiser applicants or other parties as part of an application filed with the Georgia Real Estate Appraisers Board
O.C.G.A. § 43-39A-18.1	A letter of findings issued by the Georgia Real Estate Commission to a real estate appraiser for a non-harmful violation
O.C.G.A. § 43-39A-22.1	Conviction data for real estate appraisers
O.C.G.A. § 43-40-7	All applications and supporting documents filed with the Georgia Real Estate Commission
O.C.G.A. § 43-40-25.2	A letter of findings issued by the Georgia Real Estate Commission to a licensee for a non-harmful violation
O.C.G.A. § 43-40-27(d)	Real estate misconduct investigation
O.C.G.A. § 43-40-27.1(b)	Conviction data for real estate brokers and salespersons
O.C.G.A. § 44-12-225	All information or records required to be furnished to the state revenue commissioner regarding the disposition of unclaimed property
O.C.G.A. § 45-1-4(c)	Identity of whistleblowers
O.C.G.A. § 45-2-43	Certain medical information pertaining to the physical examination of state employees
O.C.G.A. § 45-16-27(c)	Documents subpoenaed by coroners and medical examiners
O.C.G.A. § 45-16-27(d)	Autopsy photographs
O.C.G.A. § 45-16-34(b)	Documents subpoenaed by coroners
O.C.G.A. § 45-18-19	Claims forms and other records maintained by a state health insurance plan that disclose the nature of health services provided to the insured
O.C.G.A. § 45-18-36(b)	Deferred compensation plan information
O.C.G.A. § 45-18-53(b)	Flexible employee benefit plan information for certain employees

O.C.G.A. § 45-20-71	Employee assistance program records that provide the type of services received or identify the employee participating in the program [exception—when commissioner deems there is a life threatening or medical emergency]
O.C.G.A. § 45-20-111(b)	State employee drug tests
O.C.G.A. § 46-2-29	Confidential information obtained by the Public Service Commission (PSC) as part of any proceeding filed for the issuance of stocks, bonds, notes, or other debt by companies under PSC jurisdiction
O.C.G.A. § 47-1-14	Certain specified records maintained by retirement systems
O.C.G.A. § 47-7-125	Member or applicant records of the Georgia Firefighters' Pension Fund
O.C.G.A. § 47-20-87(f)	Information prepared or provided by a potential or actual alternative investment company by or for an eligible large retirement system
O.C.G.A. § 48-2-6.1	Return information secured by the state revenue commissioner incident to the administration of any tax
O.C.G.A. § 48-2-15	Information secured by the state revenue commissioner incident to the administration of any tax
O.C.G.A. § 48-5-314	All information obtained from or furnished by an ad valorem taxpayer, other than the return, that is kept by the county board of tax assessors [exception—does not apply to information gathered by staff, such as field cards]
O.C.G.A. § 48-7-60(a)	Amount of income or particulars disclosed in any report or return
O.C.G.A. § 48-7-170	Information obtained by a claimant agency from the Department of Revenue in the context of set-off debt collection
O.C.G.A. § 48-13-51	Information on gross receipts provided to a local government for the purpose of determining the amount of occupation tax owed [exception—can be provided to another local government for this purpose, by court order, for collection, or prosecution purposes]
O.C.G.A. § 48-15-10	Information contained within a report or return related to excise taxes on marijuana and controlled substances
O.C.G.A. § 49-4-20(h)	Results of any drug test performed as part of a condition for receiving food stamps
O.C.G.A. § 49-4-193	Drug test results for TANF eligibility
O.C.G.A. § 49-5-40(b)	Child abuse and neglect records
O.C.G.A. § 49-5-186	Hearings, files, and records of Central Child Abuse Registry
O.C.G.A. § 49-9-18	Names, lists, or any information concerning people applying for or receiving vocational rehabilitation
O.C.G.A. § 50-5A-11	Records that are not considered to be public records
O.C.G.A. § 50-13A-15(d)	Final judgements of the small claims division of the tax tribunal
O.C.G.A. § 50-17-26(b)	Records maintained by the Georgia State Financing and Investment Commission that reveal the names and identities of registered bond or note holders

O.C.G.A. § 50-18-72(a)(1)	Records required by federal government to be kept confidential
O.C.G.A. § 50-18-72(a)(2)	Medical or veterinary records or similar files, the disclosure of which would invade personal privacy
O.C.G.A. § 50-18-72(a)(3)	Law enforcement records that would disclose a confidential source or information that would endanger person or property
O.C.G.A. § 50-18-72(a)(4)	Law enforcement records in any pending investigation or prosecution other than initial police arrest reports, accident reports, and incident reports
O.C.G.A. § 50-18-72(a)(5)	Accident reports
O.C.G.A. § 50-18-72(a)(6)	Jury list data
O.C.G.A. § 50-18-72(a)(7)	Employee confidential evaluations
O.C.G.A. § 50-18-72(a)(8)	Employee investigations
O.C.G.A. § 50-18-72(a)(9)	Real estate appraisals of property that county has considered purchasing
O.C.G.A. § 50-18-72(a)(10)	Pending bids and proposals
O.C.G.A. § 50-18-72(a)(11)	Portions of records that would identify persons applying for or under consideration as an executive head of an agency
O.C.G.A. § 50-18-72(a)(12)	Records of legislative staff services
O.C.G.A. § 50-18-72(a)(13)	Records of historical value when the donor has placed restrictions on access
O.C.G.A. § 50-18-72(a)(14)	Records relating to the location and character of historic properties
O.C.G.A. § 50-18-72(a)(15)	Records of farm water use by individual farmers
O.C.G.A. § 50-18-72(a)(16)	Agricultural or food system records
O.C.G.A. § 50-18-72(a)(17)	Confidential information, records, or data related to the national animal identification program
O.C.G.A. § 50-18-72(a)(18)	Records of rare animals' habitats
O.C.G.A. § 50-18-72(a)(19)	Home address, telephone numbers, security codes, e-mail addresses, and any other data collected by a county in connection with burglar alarms, fire alarms, and security systems
O.C.G.A. § 50-18-72(a)(19)	Home address, telephone numbers, security codes, e-mail addresses, and any other data collected by a county in connection with a neighborhood watch or public safety notification program
O.C.G.A. § 50-18-72(a)(20)	Social security numbers, mother's birth name, credit card, debit card, bank account, account or utility account passwords and numbers, financial data, insurance and medical records, unlisted telephone numbers, 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

- O.C.G.A. § 50-18-72(a)(21) Records that reveal a 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 accounts, financial data or information other than compensation by a government agency, unlisted telephone number, and identity of the public employee's immediate family members or dependents
- O.C.G.A. § 50-18-72(a)(22) Specified records of the Department of Early Care and Learning
- O.C.G.A. § 50-18-72(a)(23) Electronic signature
- O.C.G.A. § 50-18-72(a)(24) Records acquired for the establishment of a carpooling or ridesharing program
- O.C.G.A. § 50-18-72(a)(25) Records that could compromise public security against acts of sabotage or criminal or terroristic acts
- O.C.G.A. § 50-18-72(a)(26) Name, address, and telephone numbers of callers to 9-1-1 call centers
- O.C.G.A. § 50-18-72(a)(26.1) Portions of records in audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller if he or she is a minor or died during the call
- O.C.G.A. § 50-18-72(a)(26.2) Records that contain audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation
- O.C.G.A. § 50-18-72(a)(27) Records of public recreation programs identifying children 12 years old or younger by name, address, and phone number
- O.C.G.A. § 50-18-72(a)(28) Records of the State Road and Tollway Authority which would reveal personal information, financial accounts, or travel history of motorists
- O.C.G.A. § 50-18-72(a)(29) Records maintained by public postsecondary educational institutions regarding personal information relating to donors to such institutions or foundations
- O.C.G.A. § 50-18-72(a)(30) Records of MARTA or any transit system that is connected to the TransCard or SmartCard system which would reveal the financial records or travel history of any individual who is a purchaser of either Card or similar fare medium
- O.C.G.A. § 50-18-72(a)(31) State-wide first responder building mapping information system
- O.C.G.A. § 50-18-72(a)(32) Physical evidence or investigatory material of an alleged violation of offenses related to minors
- O.C.G.A. § 50-18-72(a)(33) Retirement system records that are expressly exempt from public inspection pursuant to O.C.G.A. §§ 47-1-14 and 47-7-127
- O.C.G.A. § 50-18-72(a)(34) Records containing confidential trade secrets
- O.C.G.A. § 50-18-72(a)(35) Records containing data and other proprietary information
- O.C.G.A. § 50-18-72(a)(36) Data developed by faculty at research institutions
- O.C.G.A. § 50-18-72(a)(37) Records not subject to disclosure under 20 U.S.C. Section 1232g
- O.C.G.A. § 50-18-72(a)(38) Records containing public school testing materials
- O.C.G.A. § 50-18-72(a)(38) Records containing athletic association records

O.C.G.A. § 50-18-72(a)(39)	Records disclosing the identity of research participants
O.C.G.A. § 50-18-72(a)(40)	Records relating to licensing and possession of firearms
O.C.G.A. § 50-18-72(a)(41)	Communications subject to attorney-client privilege
O.C.G.A. § 50-18-72(a)(42)	Confidential attorney work product
O.C.G.A. § 50-18-72(a)(43)	Confidential tax information
O.C.G.A. § 50-18-72(a)(44)	Computer software used in the operation of a public office
O.C.G.A. § 50-18-72(a)(45)	Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer self-insurance coverage
O.C.G.A. § 50-18-72(a)(46)	Specified documents maintained by any agency pertaining to state economic development projects until the project is secured by a binding commitment
O.C.G.A. § 50-18-72(a)(47)	Records relating to industry services training program
O.C.G.A. § 50-18-72(a)(48)	Eligible large public retirement system records expressly exempt from public inspection pursuant to O.C.G.A. § 47-20-87
O.C.G.A. § 50-18-72(a)(49)	Information acquired by the Department of Labor as part of an investigation relating to minors employed as actors or performers pursuant to O.C.G.A. § 39-2-18
O.C.G.A. § 50-18-72(a)(50)	Records held by the Georgia Superior Court Clerks Cooperative Authority or any other entity on behalf of a superior court clerk [exception—the superior court clerk may directly release these records unless exempted from disclosure]
O.C.G.A. § 50-18-72(c)	Trial exhibits
O.C.G.A. § 50-18-72(c)	Physical evidence used in a trial exhibit to show or support a violation of O.C.G.A. § 16-12-80 <i>et seq.</i>
O.C.G.A. § 50-18-75	Communications between the Office of Legislative Counsel and public officials
O.C.G.A. § 50-18-76	Any form, document, or other written matter required to be filed as a vital record under O.C.G.A. § 31-10-25
O.C.G.A. § 50-27-12(e)	Background investigation of applicants to the Georgia Lottery Corporation
O.C.G.A. § 50-27-25(a)	Information related to the operation of the Georgia Lottery
O.C.G.A. § 50-27-54	Prize winner records
O.C.G.A. § 50-29-2(a)	Geographic Information Systems (GIS) records



ACCG

Advancing Georgia's Counties.

191 Peachtree St.
Suite 700
Atlanta, GA 30303
404.522.5022
accg.org