



Open  
Meetings

Open  
Records

Records  
Retention

# Government in the Sunshine

## **A Guide to Georgia's Open Meetings and Open Records Laws for Municipal Officials**

August 2014  
Eleventh Edition



A Georgia Municipal Association Publication

# Government in the Sunshine

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## FOREWORD

GMA is pleased to provide for municipal officials a review of the key features of the Georgia open meetings and open records laws. These laws were significantly revised in the 2012 session of the Georgia General Assembly. Many of the revisions made in HB 397 attempt to address “gray areas” under the previous laws or have incorporated or overturned court rulings interpreting the laws. Due to these changes in the laws, GMA has changed the design and content of this publication. Those who are familiar with previous editions of GMA’s “Government in the Sunshine” publication will notice that this edition has a completely different format and includes some new features such as frequently asked questions and additional information on records management. The intent is to make this edition more readable and accessible.

We express our thanks to Rusi Patel, GMA Associate General Counsel, for his work on this handbook and to Lois Kono for her invaluable assistance in formatting. We also thank the cities of Duluth, Griffin and Roswell for allowing us to include adapted versions of their ordinances, forms, policies and other materials.

The materials in this publication reflect the law in place as of August 2014 but this publication cannot and should not be used to substitute for timely advice from the city attorney. Municipal officials should rely on their city attorney to apply the law and judicial interpretations to the specific fact situations they face. We present this publication in the hopes that a working knowledge of the open meetings and open records statutes will allow city officials to recognize potential problem situations when they arise and to seek legal counsel to insure compliance with the law.



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# GOVERNMENT IN THE SUNSHINE

## Introduction

“All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.<sup>1</sup> ...The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it.”<sup>2</sup> These words in the Georgia Constitution are the starting point for any consideration of Georgia’s laws on open meetings and open records. They are a reminder that government is created by and for the people to promote the common good and that public officials and employees are the servants, not the masters. These public servants are expected to execute their duties in an honest and trustworthy manner that can be reviewed, judged and critiqued by the people. The only way the people can regulate their government is if they know what it is doing. Thus, openness in government must be the rule and not the exception. Openness in government is also a key to building public trust.

This publication is divided into three parts. The first part addresses the Georgia Open Meetings Act, the second part addresses the Georgia Open Records Act and the third part addresses records retention and basic records management. The first two parts of the publication are set up the same way. First there is a narrative on the requirements and exemptions in the law focusing on those areas most relevant to local government operations. Second, there are summaries or checklists for easy reference. Third, there are frequently asked questions, followed by the text of the entire statute and then by sample forms and policies. All of these are intended to assist city officials and employees in complying with the Open Meetings Act and the Open Records Act but they cannot take the place of consultation with the city attorney. The city’s attorney is in the best position to apply the law to the facts of a particular situation and be able to provide accurate, timely advice.

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<sup>1</sup>Ga. Const. Art. I, Sec. II, Par. I.

<sup>2</sup>Ga. Const. Art. I, Sec. II, Par. II.



## Part I - Open Meetings

### Overview of the Open Meetings Act

#### ***Who Must Comply with the Open Meetings Act?***

Georgia's open meetings law applies to meetings of the governing authority of every "agency" as that word is defined in the statute. The definition includes every county, municipal corporation, school district, or other political subdivision of the state and every municipal, county, regional or other authority.<sup>1</sup> Thus meetings of the city council and meetings of the city's downtown development authority are covered meetings. The term "agency" also applies to the governing body of every city department, agency, board, bureau, office, commission, authority, or similar body. This definition is somewhat redundant in that the governing body of most city departments will be the city council itself or some subset of its members. However, this definition does make clear that meetings of the planning and zoning board, the zoning board of appeals, the personnel review board, the merit system board, the water and sewer authority, the development authority, the housing authority, the recreation authority, and similar bodies must also follow the requirements of the open meetings law. Finally, the definition of "agency" includes every state department, agency, board, bureau, office, commission, public corporation, and authority. The definition of "agency", and thus coverage by the Open Meetings Act, does not apply to the General Assembly.

#### ***What is and is not a "Meeting"?***

The first requirement for a "meeting" is the gathering of a quorum of the members of the governing body of an agency, any committee of the members of the governing body of an agency, or any committee created by such governing body.<sup>2</sup> The second requirement is that the gathering must be one at which any official business, policy, or public matter of the agency or committee is formulated, presented, discussed or voted upon. Both of these requirements must be met to come within the statute's definition of "meeting."

A "quorum" may be defined in a city's charter but, if it is not, the accepted definition of a "quorum" is fifty percent plus one. Thus, a city council comprised of five members

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<sup>1</sup>O.C.G.A. §50-14-1(a)(1).

<sup>2</sup>O.C.G.A. §50-14-1(a)(3).

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would usually have a quorum of three. Whether the mayor is or is not counted for purposes of determining a quorum again depends on the language of the charter.

The definition of “meeting” does not include certain gatherings of a quorum of a governing body or committee so long as the primary purpose of the gathering is not to evade or avoid the requirements of the Open Meetings Act and so long as no official action is taken by the members during that gathering.<sup>3</sup> For example, it is not considered a “meeting” when a quorum of a governing body or committee gathers to inspect physical facilities or property under the jurisdiction of the agency or gathers to meet with officials of the legislative or executive branches of the state or federal government at state or federal offices. Similarly, it is not considered a “meeting” when a quorum of a governing body or committee of an agency gathers to attend state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency. It also is not considered a “meeting” when a quorum of the members of a governing body of an agency gets together for the purpose of traveling to a meeting or gathering as otherwise authorized by the law. Again, no official business, policy, or public matter can be formulated, presented, discussed, or voted upon by the quorum while attending the training or traveling.

The law also recognizes that city officials are often present at the same social, ceremonial, civic or religious events but are there to participate in that event and not to conduct official business. Thus, the law states that when a quorum of the body or committee are at such an event it is not a “meeting” so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum. Even though these types of gatherings are not considered “meetings” and thus are not subject to the requirements for notice, agenda and minutes, city officials should always be mindful of the public’s perception that official decisions are being made informally in these types of settings.

Additionally, city officials should be aware that exclusion from the definition of “meeting” of the exemptions noted above will not apply “...if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.”<sup>4</sup> Thus, city officials utilizing most of the exemptions noted above from the definition of “meeting”

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<sup>3</sup>O.C.G.A. §50-14-1(a)(3)(B).

<sup>4</sup>O.C.G.A. §50-14-1(a)(3)(B).

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need to scrupulously avoid discussing any policy, public matter or official business of or related to the city. Note that the exception for meeting with state or federal legislative or executive branch officials at a state or federal office only prohibits taking official action by the members. It makes sense that discussion or formulation of official business, policy or a public matter would be allowed in such circumstances but a vote would not. However, when a quorum is traveling to such a meeting, attending a funeral, or participating in training on city functions, such officials are advised to limit discussion with one another to matters that do not implicate city business.

There are also gatherings which are not subject to the Open Meetings Act. The Open Meetings Act does not apply to gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party.<sup>5</sup> Any decision or resolution agreed to by an agency through such mediation shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement or similar document formally resolving a claim or dispute is subject to the Open Records Act. Also not subject to the Open Meetings Act are incidental conversations unrelated to the business of an agency.<sup>6</sup> An example of this would be something like “How about them Braves?” Finally, the law states that e-mail communications among members of an agency are not subject to the Open Meetings Act.<sup>7</sup> Note, however, that such communications are subject to disclosure pursuant to the Open Records Act. The intent of this provision is to recognize and treat e-mail communications like hard copy memoranda shared with members of an agency. City officials are cautioned not to use technology in an attempt to avoid the requirements of the Open Meetings Act.

## ***Notice of Meetings***

The city must provide the public with advance notice of meetings. Notice of the time, place, and dates of regular meetings (e.g., the city council’s monthly meeting) must be made available to the general public and be posted in a conspicuous place at the regular meeting place of the agency and must be posted on the agency’s website, if it has one.<sup>8</sup> For any meetings that are not conducted at the regular meeting place or time, the agency must post the time, place, and date of the meeting for at least 24

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<sup>5</sup>O.C.G.A. §50-14-3(a)(5).

<sup>6</sup>O.C.G.A. §50-14-3(a)(7).

<sup>7</sup>O.C.G.A. §50-14-3(a)(8).

<sup>8</sup>O.C.G.A. §50-14-1(d)(1).

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hours at the regular meeting location and give written or oral notice at least 24 hours in advance of the meeting to the legal organ of the county or a newspaper with equal circulation.<sup>9</sup> In counties in which a legal organ is published less than four times per week, the time, place, and date of the meeting must be posted for at least 24 hours at the regular meeting location and, upon written request from broadcast or print media in the county, notice must be provided to the requesting media outlet 24 hours in advance of the meeting. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda must be provided by fax, by e-mail, or by mail through a self-addressed, stamped envelope provided by the requester.

For emergency meetings (i.e., meetings with less than 24 hours notice), the meeting notice must include the date, time and location of the meeting, the subjects expected to be covered at the meeting and the reason for meeting with less than 24 hours notice.<sup>10</sup> Notice must be provided to the county legal organ or a newspaper with greater circulation in the county than the legal organ. Notice must also be provided by telephone, fax or e-mail to any broadcast or print media outlet whose place of business and physical facilities are located in the county when such media outlet has made written request for such notice within the previous calendar year. Many cities have made it a practice to simply notify all of the newspapers, radio stations and television stations serving the area when there are special called meetings or there is an emergency meeting.

Regularly scheduled meetings can be cancelled or postponed. This often happens when the customary meeting date falls on a holiday.

### ***Agenda, Summary and Minutes***

An agenda of all matters expected to come before the council or other governing body must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting.<sup>11</sup> If a particular issue is not included on the posted agenda it may still be considered by the council if it is deemed necessary to address it. The courts have not yet defined what is meant by "necessary to address" and individuals, often with competing political agendas, may have different definitions. However the clear intent of this provision is to ensure that the public is informed of the matters that will come before the body.

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<sup>9</sup>O.C.G.A. §50-14-1(d)(2).

<sup>10</sup>O.C.G.A. §50-14-1(d)(3).

<sup>11</sup>O.C.G.A. §50-14-1(e).

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Thus elected officials should avoid amending the agenda at the meeting to add a matter, particularly one that is known to be controversial, unless there is a clear and unambiguous necessity to do so.

Many cities post agendas for their meetings on the city website and note on the face of the agenda the date and time when each agenda was last updated. This allows members of the public to have up to date information.

Members of the public must be allowed access to the meeting and must be allowed to make visual and sound recordings of the open portions of any meeting.<sup>12</sup> Some city councils designate an area or areas where equipment for visual and sound recordings can be placed so that the equipment does not obstruct the view of meeting attendees and use of the equipment is not disruptive to the meeting. If a city or any other “agency” subject to the Open Meetings Act is going to do this, they should formulate and adopt a clear policy addressing the issue at a time when there is nothing controversial going on to avoid the perception that the policy on recording equipment is aimed at a particular person or constituency.

If attendance at a meeting is larger than the meeting room can accommodate, then the council should move the meeting to a larger meeting room, if available.<sup>13</sup>

A written summary of the subjects acted on and a list of the officials attending the meeting must be prepared and made available within two business days of the meeting.<sup>14</sup> Minutes of the meeting must be prepared and made publicly available after having been approved as official; such approval is to occur at the next regular meeting of the agency. The minutes must, at a minimum, contain the names of the governing body members present at the meeting, a description of each motion or other proposal made, a record of who made and seconded each motion, and a record of all votes including who voted for and who voted against each motion. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining. For meetings with less than 24 hours notice, the minutes must also describe the notice given and the reason for the emergency meeting.

Minutes of executive sessions must be taken but are not open to the public. Such minutes must specify each issue discussed but the substance of attorney-client

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<sup>12</sup>O.C.G.A. §50-14-1(c).

<sup>13</sup>Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001)

<sup>14</sup>O.C.G.A. §50-14-1(e)(2).

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discussions need not be recorded and are not to be identified in the minutes. Executive session minutes are subject to *in camera* inspection by an appropriate court should a dispute arise as to the propriety of any executive session. An *in camera* inspection is a review of the records by a judge in the judge's chamber. This preserves the confidentiality of the executive session minutes unless and until the judge rules that the meeting should have been open.

If the governor or other authorized state official declares an emergency or disaster that renders it impossible or imprudent to hold a meeting at the regular time and place, a meeting may be held at the call of the presiding officer or any two members of the governing body.<sup>15</sup> To the extent made necessary by the emergency, the council members are not required to comply with time consuming procedures and formalities prescribed by law, according to the Georgia Emergency Management Act of 1981.<sup>16</sup> Additionally, in situations necessitated by emergency conditions involving public safety or the preservation of property or public services cities may conduct meetings via teleconference so long as the proper notice requirements are met and the public is given access to the teleconference meeting. A city council or other agency can also meet by teleconference if necessary due to the health of a member or the absence of a member from the jurisdiction so long as a quorum is present in person and the other requirements for an open meeting are met.<sup>17</sup> Under this exception a member of an agency can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion of a physician or other health professional stating that reasons of health prevent that member's physical presence, however, a quorum of the members must still be present in person.<sup>18</sup> Finally, teleconference meetings are allowed to be held when one or more of the city's members are on ordered military duty at the time of the meeting, so long as the meeting is otherwise held in compliance with state law.<sup>19</sup>

## ***When Can a Meeting be Closed?***

Although there are numerous exceptions to the requirements of the open meetings law, there are six primary reasons why a city council would lawfully hold a closed

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<sup>15</sup>O.C.G.A. §§ 38-3-54 and 38-3-55.

<sup>16</sup>Ibid.

<sup>17</sup>O.C.G.A. §50-14-1(g).

<sup>18</sup>Ibid.

<sup>19</sup>O.C.G.A. § 38-2-279(g).

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meeting or executive session. These reasons are: (1) to discuss pending or potential litigation with legal counsel and to discuss or vote on settlement;<sup>20</sup> (2) to discuss or vote on authorizing negotiations to purchase, dispose of, or lease property; (3) to discuss or vote on the acquisition, disposition or lease of real estate by the city;<sup>21</sup> (4) to discuss hiring, compensation, evaluation or disciplinary action for a specific public officer or employee;<sup>22</sup> (5) to interview an applicant to be executive head of a department; or (6) to discuss records that are exempt from disclosure.<sup>23</sup>

The attorney-client privilege allows the council to meet in a closed meeting with its attorney to discuss a pending or potential lawsuit, settlement, claim, administrative proceeding or other judicial action brought against or by the city, or any officer or employee of the city, or in which the city or any officer or employee may be directly involved. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, an attorney representing the city must be present and discussing with the counsel the pending or potential lawsuit, settlement or claim. Second, a lawsuit by or against the city must already be filed, or there must be a potential lawsuit. A mere threat to take legal action against the city is not enough to close a meeting to discuss a potential lawsuit.<sup>24</sup> In order to determine whether a threat to sue the city is a potential lawsuit that may be discussed in an executive session, council members should ask the following questions:

1. Is there a formal demand letter or something else in writing that presents a claim against the city and indicates a sincere intent to sue?
2. Is there previous or preexisting litigation between the city and the other party or proof of ongoing litigation on similar claims?
3. Is there proof that the other party has hired an attorney and expressed an intent to sue?

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.<sup>25</sup> No vote in executive session to

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<sup>20</sup>O.C.G.A. § 50-14-2(1).

<sup>21</sup>O.C.G.A. § 50-14-3(b)(1).

<sup>22</sup>O.C.G.A. § 50-14-3(b)(2).

<sup>23</sup>O.C.G.A. § 50-14-3(b)(4).

<sup>24</sup>The Claxton Enterprise v. Evans County Board of Commissioners, 249 Ga.App. 870, 549 S.E.2d 830 (2001).

<sup>25</sup>O.C.G.A. § 50-14-2(1).

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settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the parties and principal settlement terms are disclosed before the vote. Remember, a meeting may not be closed for advice or consultation on whether to close a meeting.

An agency may close a meeting to discuss or vote to authorize negotiations to purchase, dispose of or lease property, or to enter into a contract to purchase, dispose of or lease property subject to approval in a subsequent public vote. Note that these exceptions apply to property generally and are not limited to real estate. Thus they should apply to authorize negotiations or the entering into contracts for city purchases of personal property, such as vehicles, equipment, or supplies. The additional exceptions authorizing a closed meeting to discuss or vote upon ordering an appraisal related to the acquisition or disposal of real estate, or to enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote are limited to real estate only. No vote in executive session to acquire, dispose of, or lease real estate, is binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote.

The governing body of an agency may close the portion of the meeting during which the members are deliberating on hiring, appointing, compensating, disciplining, or dismissing a public officer or employee. However, any portion of a meeting during which the body receives evidence or hears arguments on personnel matters must be open. A city council may also go into executive session to discuss or deliberate on the periodic evaluation or rating of a public officer or employee, or to interview applicants for the position of executive head of an agency. What positions qualify as “executive head of an agency”? To determine that, reference must be made to the definition of agency provided in the Open Meetings Act. “Agency” includes the city itself and “[e]very department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state.”<sup>26</sup> Thus, if the governing body of an agency is empowered to hire the “executive head of an agency”, then a quorum of the body should be permitted by the statute to interview applicants for that position in a properly closed meeting. Note that the exceptions allow certain discussions and interviews to take place in an executive session but that all votes on personnel matters must be taken in public.

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<sup>26</sup>O.C.G.A. §50-14-1(a)(1)(C).

The final reason that the governing body of a local government agency, such as a city council, would go into executive session is to discuss records that are exempt from disclosure but only if there are no reasonable means by which the agency could consider the record without disclosing the exempt portions of the record if the meeting were open.

Because closed meetings are the exception and not the rule, if there is any doubt whether a topic may be discussed in a closed meeting, the city attorney should be consulted. If doubt remains, the meeting should be open. And it does not matter what a closed meeting is called. A closed meeting may be called an executive session, a work session or something else.<sup>27</sup> For purposes of the open meetings law, there are only two types of meetings – open or closed. Whatever a meeting is called, it should be clear to the public whether the meeting is open or closed.

### ***How a Meeting is Closed?***

A majority vote of the quorum present for the meeting is required to close a meeting. The specific reason for closing the meeting must be stated in the minutes, the minutes must reflect the names of the members of the governing authority present and those voting to close the meeting, and these portions of the minutes must be made available to the public.<sup>28</sup> When a meeting is properly closed but the discussion begins to stray into an area of discussion required to be open, the presiding officer must rule the discussion out of order and the discussion must cease.<sup>29</sup> If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer must immediately adjourn the executive session.<sup>30</sup>

When a meeting is closed under the Open Meetings Act, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, must execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the

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<sup>27</sup>The law actually defines "executive session" as "a portion of a meeting lawfully closed to the public." O.C.G.A. §50-14-1(a)(2).

<sup>28</sup>O.C.G.A. §50-14-4(a).

<sup>29</sup>O.C.G.A. § 50-14-4(b)(2).

<sup>30</sup>Ibid.

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exceptions provided by law and identifying the specific relevant exception.<sup>31</sup> False swearing is a felony under Georgia law.<sup>32</sup>

## ***Enforcement and Penalties***

Any action taken at a meeting that was not open and should have been is not binding.<sup>33</sup> Parties who wish to contest that an action was invalidly taken in a closed meeting must do so within 90 days after the date the action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken. Any action under the Open Meetings Act contesting a zoning decision must be commenced within 30 days.

Any person knowingly and willfully conducting or participating in a meeting in violation of the Open Meetings Act may be convicted of a misdemeanor and fined not more than \$1,000.00.<sup>34</sup> Alternatively, a civil penalty not to exceed \$1,000.00 for the first violation may be imposed by the court in any civil action brought under the Open Meetings Act against any person who negligently violates the Act. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation committed within a 12-month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action that a person has acted in good faith. An agency or person who provides access to information in good faith pursuant to the Open Meetings Act will not be held liable for having provided such access.<sup>35</sup> If anyone signs an executive session affidavit containing false information, he or she may be convicted of a felony and fined \$1,000.00 and/or imprisoned for up to five years.<sup>36</sup> Further, participation in a meeting that is held in violation of the Open Meetings Act may be grounds for a recall action.<sup>37</sup>

Someone who sues for a violation of the Open Meetings Act is to be paid their attorney's fees and other litigation costs, unless special circumstances exist. The

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<sup>31</sup>O.C.G.A. § 50-14-4(b)(1).

<sup>32</sup>O.C.G.A. §16-10-71.

<sup>33</sup>O.C.G.A. §50-14-1(b)(2).

<sup>34</sup>O.C.G.A. § 50-14-6.

<sup>35</sup>Ibid.

<sup>36</sup>O.C.G.A. § 16-10-71.

<sup>37</sup>See O.C.G.A. § 21-4-3(7); Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994).

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test for whether fees and other expenses will be assessed against the governing body is whether the position of the complaining party was substantially justified. The Attorney General is authorized to bring enforcement actions, either civil or criminal, as appropriate to enforce the law.<sup>38</sup>

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<sup>38</sup>O.C.G.A. § 50-14-5(b).

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## Selective Summary of Exceptions

### ***What is NOT a Meeting***

- Inspecting facilities or property where no other official action is discussed or taken [§ 50-14-1 (a)(3)(B)(i)].
- Attending statewide or regional meetings or training on matters related to the purpose of the agency and where no official action is taken [§ 50-14-1 (a)(3)(B)(ii)].
- Meetings, where no official action is taken, with state or federal legislative or executive officials at state or federal offices [§ 50-14-1 (a)(3)(B)(iii)].
- Traveling together where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1 (a)(3)(B)(iv)].
- Attending social, civic, ceremonial or religious events where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1(a)(3)(B)(v)].

However, regarding exceptions (i) through (v) above, if it can be shown that the primary purpose of the gathering was to avoid the requirements of the open meetings law while discussing or conducting official business, then the gathering would be deemed a meeting where all notice, access, agenda, summary and minutes requirements must be met [§ 50-14-1 (a)(3)(B)].

### ***Which Meetings May be Closed***

- Acquisition, disposal or lease of property may be discussed in executive session [§ 50-14-3 (b)(1)].
- In contrast to the general rule, votes may be taken in executive session regarding the following [§ 50-14-3 (b)(1)]:
  - To authorize settlement of any matter relative to the attorney-client privilege per OCGA § 50-14-2 (1).
  - To authorize negotiations to acquire, dispose of or lease property.
  - To authorize an appraisal relative to the acquisition or disposal of real estate.

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- o To contract to purchase, dispose of or lease property.
- o To enter into an option to purchase, dispose or lease real estate.

However, no vote to acquire, dispose of or lease real estate or to settle a claim is binding until subsequently voted on in open meeting.

- Applicants for the position of executive head of an agency may be interviewed in executive session [§ 50-14-3 (b)(2)].
- Discussion in executive session of records that are otherwise protected from disclosure under the Open Records Act is authorized [§ 50-14-3 (b)(4)].

## Open Meetings - FAQs

**Q:** What if a member of a committee or council shows up to a duly noticed meeting of another committee or board of the city of which he or she is not a member? For instance, is it a covered “meeting” if a quorum of the city council attend a meeting of the planning and zoning board or of the development authority?

**A:** In our opinion, the operative questions in this instance are: (1) why the members of the city council are at the meeting; and (2) whether the quorum is discussing city business or policy amongst themselves at the meeting. It is important to remember that persons serving on city council, a city committee or city board are also citizens of the community and may legitimately have a need to or interest in attending committee and board meetings just as any other citizen. If each member of the quorum has a matter of interest before the zoning board that evening, they should take care to avoid discussing any public business and should sit separated from each other to emphasize that they are attending as individuals and not in an official capacity. This would seem to fall within the exception for attending a civic event where the quorum is not discussing or voting upon official business, policy or public matter. O.C.G.A. §50-14-1(a)(3)(B)(v). Note that the council can certainly provide more notice to the public than required by the Open Meetings Act.

**Q:** We have a council member who travels frequently for work and another who has an ongoing seriously illness making it impossible for him to physically attend meetings for the next six months. Can our city hold a meeting via teleconference or video conference?

**A:** Yes, however you need to be aware of and comply with the limitations on teleconference meetings. If one or more of the members of city council, committee, or board is on ordered military duty at the time of the meeting then that member may participate in the meeting by teleconference as long as the meeting is otherwise conducted in accordance with state law. Cities can also conduct meetings via teleconference when necessitated by emergency conditions involving public safety, or the preservation of property or public services. However, if a city holds a teleconference meeting for emergency purposes the public must be afforded access to the teleconference meeting

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and proper notice of the meeting must be given. Finally, members of the city council, a city committee, or board may take part in a meeting via teleconference if necessary due to health reasons or when they are absent from the city but a quorum of the council, committee or board must be present at the meeting in person and the other requirements of the law (notice, agenda, minutes, etc.) must be met. Under this authorization for teleconferencing a member can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion from a physician or other medical professional that health reasons prevent him or her from attending in person.

**Q:** The city is preparing for local option sales tax (LOST) negotiations and the committee which will undertake the negotiations with the county wants to be able to prepare a strategy in private. Is there an exception to the open meetings law for such preparations?

**A:** No, under the open meetings law the gathering of a quorum of any committee of the members of a city or a quorum of any committee created by the governing body is a meeting subject to the open meetings requirements under the law. If, however, the initial negotiations do not result in agreement and the matters moves to mediation, the exception applicable to mediations may apply. If disagreement over the LOST distributions end up in court, then the attorney-client privilege may apply.

**Q:** When can our city vote in executive session?

**A:** The city council is allowed to vote in executive session on the acquisition, disposal of, or lease of real estate, or to settle litigation, claims, or administrative proceedings but that vote will not be binding until the city council takes a vote in a public meeting where the property and terms are identified before the vote or the parties and settlement terms are disclosed before the vote. Although interviewing applicants to be the executive head of an agency can be done in executive session and certain personnel matters can be discussed in executive session, all votes must be taken in public.

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**Q:** Is there any requirement that issues discussed in executive session be kept secret?

**A:** The provisions in the law allowing certain discussions to occur in executive sessions (closed meetings) are there to ensure that the agency can function efficiently and is not placed at a financial or legal disadvantage. The members of the agency's governing body owe a fiduciary duty to the agency and those served by it to act in the best interests of the agency as a whole and not any particular individual, business or other interest. The confidentiality of the executive session is a privilege that belongs to all members of the city council in the executive session and not to any one member individually. This is especially true in instances where matters subject to the attorney-client privilege are discussed. It is important for city council members to understand that although the city attorney may represent them in their capacity as city officials, the city attorney is not their attorney individually; the city attorney is the attorney for the city. Therefore, when the executive session involves matters subject to the attorney-client privilege it is not an option of any one individual to waive the attorney-client privilege for the entire city.

Additionally, depending upon the circumstances, divulging matters appropriately discussed in a closed session could be perceived as malfeasance in office, misconduct in office or a violation of the oath of office and could result in someone seeking to recall or remove the official from office. A city's charter or ethics ordinance may also impose a penalty for violating the confidentiality of a properly closed meeting. Finally, if it is a litigation matter covered by insurance, the insurer may regard the failure to keep attorney-client confidences as a failure to cooperate that could impact the coverage provided to the city or the individual.

**Q:** Are hearings or appeals regarding employee disciplinary procedures subject to open meetings?

**A:** Meetings that are held to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a city employee or officer may be held in a closed meeting. However, if any of the above involves the receipt of evidence or hearing argument on personnel matters, including whether to impose

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disciplinary action or dismiss a city employee or officer, then it must be held in an open meeting. It doesn't matter if the employee requests that the hearing be private. The open meetings law determines what can and cannot be the subject of a closed meeting.

**The Georgia Open Meetings Act**

§ 50-14-1.

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

(1) "Agency" means:

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

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

(3) (A) "Meeting" means:

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

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- (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.
- (B) “Meeting” shall not include:
- (i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;
  - (ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;
  - (iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;
  - (iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or
  - (v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed or voted upon by the quorum.

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

- (b) (1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.
  - (2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.
  - (3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.
- (c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.
- (d) (1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with

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a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

- (2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requester.
- (3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

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- (e) (1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.
- (2) (A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.
- (B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.
- (C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but

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the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

- (f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.
- (g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

### § 50-14-2.

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

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

### § 50-14-3.

(a) This chapter shall not apply to the following:

- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
- (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;
- (3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;
- (4) Adoptions and proceedings related thereto;
- (5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;
- (6) Meetings:
  - (A) Of any medical staff committee of a public hospital;
  - (B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter

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7 of Title 31, or under any other applicable federal or state statute or regulation; and

- (C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;
  - (7) Incidental conversation unrelated to the business of the agency; or
  - (8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.
- (b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:
- (1) Meetings when any agency is discussing or voting to:
    - (A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;
    - (B) Authorize negotiations to purchase, dispose of, or lease property;
    - (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
    - (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
    - (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

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

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- (2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;
- (3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and
- (4) Portions of meetings during which that portion of a records made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

### § 50-14-4.

- (a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be

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- taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.
- (b) (1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.
- (2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

### § 50-14-5.

- (a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

§ 50-14-6.

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

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## **SAMPLE PROCEDURE AND FORMS FOR AN EXECUTIVE SESSION: SAMPLE MOTION, RESOLUTION AND AFFIDAVIT**

To properly close a city council meeting to the public, certain information must be included in the council minutes and, following the executive session, the presiding officer, or all members of the governing body participating in the executive session, must complete an affidavit (1) stating that the subject matter of the meeting was within an exception to the Open Meetings Act, and (2) identifying the specific relevant exception(s) relied upon. See O.C.G.A. Chapter 50-14-4(b). The following sample city council motion, council resolution, and affidavit are provided to assist city attorneys in assuring that the requirements of the law for closing meetings to the public are met.

To close an agency meeting to the public, a majority of a quorum present must vote for such closure. The specific reasons for the closure must be included in the official minutes. What if only one topic on the agenda represents a matter allowing for closure? The law mandates that when only a portion of a meeting involves a matter that permits closure to the public, the remainder of the meeting must be open to the public.

All proper closed meetings start in an open meeting. A motion is then made to go into executive session or close the meeting and, after a proper second and approval of the motion, the meeting is closed. When the closed meeting ends there should be a motion, second and vote to return to an open meeting. The body should then conduct the remainder of its business, even if it is simply to adjourn, in the open meeting.

Although motions usually are not written in advance the sample motion form is intended to ensure that the minutes reflect the specific reason(s) for closing the meeting, who moved to close the meeting, who provided a second and how each member in attendance voted.

Unlike the sample motion, the sample resolution is not required by law. However, it gives the council's support to the presiding officer who must execute an affidavit confirming compliance with the law. As an added precaution, the council may, as suggested in the sample resolution, ratify any action taken during the closed meeting.

A key requirement of the law is that the presiding officer or all members of the governing body participating in the executive session must execute an affidavit under oath. This affidavit must state that the subject matter of the closed meeting or closed portion of a meeting was devoted to matters falling within the exceptions to the open meeting requirement and must identify the specific exception(s) applicable to the closed meeting covered by the affidavit. A sample affidavit is also presented.

**SAMPLE**  
**MOTION TO ENTER INTO A CLOSED MEETING OF A CITY COUNCIL**

Council member \_\_\_\_\_ makes the following motion:

That this Mayor and Council now enter into closed session as allowed by Chapter 14 of Title 50 of the Georgia Code and pursuant to advice by the City Attorney, for the purpose of discussing the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_ (*Specify the purpose(s) by which the meeting is to be closed*);

Motion Seconded By: \_\_\_\_\_

**Motion Approved**

Those voting in favor of the motion for closure: Council Members \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_.

Those voting against the motion for closure: Council Members \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_.

**SAMPLE RESOLUTION  
OF THE \_\_\_\_\_ CITY COUNCIL**

BE IT RESOLVED by the \_\_\_\_\_ City Council as follows: At the meeting held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the Council entered into executive session for the purpose of discussing \_\_\_\_\_. At the close of the discussions upon this subject, the Council did vote to re-enter into open session and herewith takes the following action in open session:

- (1) The actions of the Council and the discussions of the same regarding the matter set forth for closed session purposes are hereby ratified.
- (2) Each member of this body does hereby confirm that to the best of his or her knowledge, based upon the advice of the City Attorney, the said subject matter of the meeting and of the closed session portion was devoted to matters within the specific relevant exception(s) as set forth above.
- (3) The Mayor, or the presiding officer, is hereby authorized and directed to execute an affidavit, with full support of the members of this Council, in order to comply with O.C.G.A. §50-14-4(b).
- (4) The affidavit shall be included and filed with the official minutes of the meeting and shall be in a form as required by the statute, which shall be substantially as follows: *(see sample affidavit)*.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Attest \_\_\_\_\_

City Clerk

\_\_\_\_\_

Mayor

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## SAMPLE AFFIDAVIT

Before an officer duly authorized to administer oaths appeared \_\_\_\_\_, who, after being duly sworn, deposes and on oath states the following:

(1) I am competent to make this Affidavit and have personal knowledge of the matters set forth herein.

(2) Pursuant to my duties as \_\_\_\_\_, I was the presiding officer of a meeting of the \_\_\_\_\_ City Council held on the \_\_\_ day of \_\_\_, \_\_\_. A portion of said meeting was closed to the public.

(3) It is my understanding that O.C.G.A. § 50-14-4(b) provides as follows:

When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(4) The subject matter of said meeting, or the closed portion thereof, was devoted to matters within exceptions to public disclosure provided by law. Those specific relevant exceptions are identified as follows: *(Using the list below as a guide list in the affidavit **only** the exceptions actually applicable to the specific closed meeting.)*

A. Meeting to discuss or vote to authorize the settlement of a matter covered by the attorney-client privilege as provided in Georgia Code section 50-14-2(1) and 50-14-3(b)(1)(A). The subject discussed was *[identify the case or claim discussed but not the substance of the attorney-client discussion]*.

B. Meeting to discuss or vote to authorize negotiations to purchase, dispose of or lease property as provided in Georgia Code section 50-14-3(b)(1)(B).

- C. Meeting to discuss or vote to authorize the ordering of an appraisal related to the acquisition or disposal of real estate as provided in Georgia Code section 50-14-3(b)(1)(C).
- D. Meeting to discuss or vote to enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote as provided in Georgia Code section 50-14-3(b)(1)(D).
- E. Meeting to discuss or vote to enter into an option to purchase, dispose of, or lease real estate subject to approval in a subsequent public vote as provided in Georgia Code section 50-14-3(b)(1)(E).
- F. Meeting to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee as provided in Georgia Code section 50-14-3(b)(2).
- G. Meeting to interview one or more applicants for the position of the executive head of an agency as provided in Georgia Code section 50-14-3(b)(2).
- H. Pursuant to the attorney-client privilege and as provided by Georgia Code section 50-14-2(1), a meeting otherwise required to be open was closed to the public in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved and the matter discussed was *[identify the matter but not the substance of the discussion]*.
- I. Staff meeting held for investigative purposes under duties or responsibilities imposed by law as provided by Georgia Code section 50-14-3(a)(1).

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J. Meeting to consider records or portions of records exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of Title 50 of the Georgia Code because there are no reasonable means to consider the record without disclosing the exempt portions.

This Affidavit is executed for the purpose of complying with the mandate of O.C.G.A. § 50-14-4(b) and is to be filed with the official minutes for the aforementioned meeting.

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

Affiant

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

Notary Public

## Part II - Open Records

### Overview of the Open Records Act

“The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.”<sup>1</sup>

#### ***Who Must Comply with the Open Records Law?***

Georgia’s open records law generally applies to the same “agencies” as defined by the Open Meetings Act. Thus it applies to the city and all city departments, agencies, boards, bureaus, commissions, authorities, and other similar bodies.<sup>2</sup>

Generally, the city employee or official who maintains the records is the records custodian who actually responds to requests for city records. For example, if an individual requested council meeting minutes, the city clerk would be the likely records custodian to handle the request. If an individual requested personnel records, the personnel director or his or her designee might be the records custodian. Often police departments have their own records officer due to the frequency of records requests and the special rules applicable to certain law enforcement records.

The city can designate one or more persons to serve as the custodian of agency records and open records officer.<sup>3</sup> A city may want to review its charter to determine whether a custodian of records is named in the charter and determine whether the city’s charter should be amended to authorize the appointment of additional records officers. An agency can require that all written records requests be made upon

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<sup>1</sup>O.C.G.A. § 50-18-70(a).

<sup>2</sup>Ibid

<sup>3</sup>O.C.G.A. §50-18-71(b)(1)(B).

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the designated open records officer. However, the law specifically provides that an agency cannot delay its response to an open records request just because the designated open records officer is absent or unavailable.<sup>4</sup> Thus, a city needs to ensure that at all times there is available to the public a designated open records officer who can receive and respond to their request. This may necessitate stating at the time the designation of one or more open records officers is made who the alternate open records officers will be. Another option is to designate alternates on an “as needed” basis.

If an agency designates one or more open records officers, it must provide notice of such designation(s) to any person requesting records, must notify the county legal organ, and must post the designation(s) on the agency’s website, if it has one.<sup>5</sup>

### ***Public Records Subject to Disclosure***

“Public record” is defined to include all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received in the course of the operation of an agency.<sup>6</sup> Such records are subject to disclosure unless they fall within one of the legal exemptions to the open records law. Handwritten notes, e-mails, text messages, calendars, etc., are all public records subject to disclosure under the Open Records Act. It does not matter whether the record exists electronically, as a hard copy or in some other format.

Additionally, records prepared and maintained or received by any company, individual, or other entity that does business with or has contracts with the city to provide services for the city must be available to the public under the Open Records Act.<sup>7</sup> This rule applies to records possessed by a private person or entity in the performance of a service or function on behalf of the “agency.”

Some records are not required ever to be disclosed, while other records may be withheld from disclosure only temporarily. Most of the exemptions to the open records law merely permit the city to withhold records; in other words, although records are exempt, the city may choose to release them. However, certain records must be

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<sup>4</sup>Ibid.

<sup>5</sup>O.C.G.A. §50-18-71(b)(2).

<sup>6</sup>O.C.G.A. § 50-18-70(b)(2).

<sup>7</sup>Ibid.; Hackworth v. Board of Education for the City of Atlanta, 214 Ga. App. 17, 447 S.E.2d 78 (1994).

kept confidential and may not be released. Another section of this chapter discusses some of the exemptions most relevant to mayors and council members.

### ***Response to an Open Records Request***

The open records law requires that all public records, except those legally exempted from disclosure, must be open for personal inspection by any individual at a reasonable time and place usually within three business days from the receipt of the request.<sup>8</sup> In order to respond within three business days as required, the records custodian or other individual designated to respond to open records requests needs to do the following:

1. Determine whether the city has the requested documents. The city is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request.<sup>9</sup> However, so long as the city's existing computer programs can handle it, the city cannot refuse to produce electronic records just because production of the records will require inputting search, filter or report parameters into the city's computer system.<sup>10</sup>
2. Determine whether the requested documents are subject to an exemption to the open records law. The records custodian should give careful consideration, and is well advised to consult legal counsel, before determining that a record is not subject to disclosure. Remember, the rule is that the record is open; the exceptions for not having to release a document are very narrow. As will be explained, failure to provide an open record is a crime.<sup>11</sup> However, a records custodian will not be held liable if he or she is sued for releasing a record in error in good faith reliance that it was subject to the open records law.<sup>12</sup> Once it has been determined that all or part<sup>13</sup> of a document falls under one of the legal exemptions, the city must provide, in writing, the specific legal authority exempting such

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<sup>8</sup>O.C.G.A. § 50-18-71.

<sup>9</sup>O.C.G.A. §50-18-71(j).

<sup>10</sup>O.C.G.A. §50-18-71(f).

<sup>11</sup>O.C.G.A. § 50-18-74(a).

<sup>12</sup>O.C.G.A. § 50-18-73(c).

<sup>13</sup>O.C.G.A. § 50-18-72(b).

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record from disclosure by code section, subsection, and paragraph.<sup>14</sup> If a requested document contains both open and exempt information, the records custodian must still release the document but may redact or mark out the exempt information.

3. Provide an estimate of any copying, production and administrative charges for responding to the request. Where the costs are expected to exceed \$25.00, within the three business day response time the city must inform the requester of that estimate. Unless the requester stated in the request a willingness to pay an amount that exceeds the search and retrieval costs, the city can defer search and retrieval of the records until the requester has agreed to pay the estimated costs.<sup>15</sup> Where fees are specifically authorized by law, those fees shall apply.<sup>16</sup> Reasonable charges for search, retrieval, redaction, production and copying may be collected. Where the cost is estimated to exceed \$500.00, the city can insist on prepayment of the costs before beginning any search and retrieval.<sup>17</sup> If a person asks to inspect or copy records and then does not pay the lawfully incurred charges, the city can require prepayment for all future requests until the prior charge is paid.<sup>18</sup> When a person has requested copies and does not pay, the city is authorized to collect the charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the city,<sup>19</sup> so long as an estimate for the charges was provided to the requesting party before the records custodian fulfilled the request.<sup>20</sup> This is true even if the requester does not inspect the records or accept copies of the records.

The hourly charge for search, retrieval or redaction cannot exceed the salary of the lowest-paid full-time employee with the requisite skill and knowledge to perform the request and there may be no charge for the first 15 minutes of work.<sup>21</sup> When a request has been made that requires

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<sup>14</sup>O.C.G.A. § 50-18-71(d).

<sup>15</sup>Ibid.

<sup>16</sup>O.C.G.A. § 50-18-71(c)(1).

<sup>17</sup>O.C.G.A. 50-18-71(d).

<sup>18</sup>Ibid.

<sup>19</sup>O.C.G.A. § 50-18-71(c)(3).

<sup>20</sup>O.C.G.A. § 50-18-71(d).

<sup>21</sup>Ibid.

photocopies to be produced by the agency, it may charge 10¢ per page for letter or legal size copies, or, in the case of other documents, the actual cost of producing the copy.<sup>22</sup> For records made available through electronic means, the agency may charge the actual cost of the media on which the records are produced.<sup>23</sup> Cities may establish license fees or other fees for providing information from the geographic information system to recover a reasonable portion of the cost to the taxpayers associated with building and maintaining the system.<sup>24</sup> When requests are made 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 procedures and copying fees do not apply if they are sought in conjunction with an ongoing administrative, criminal, or tax investigation.<sup>25</sup>

4. Permit inspection and copying of the requested documents, if available. Available documents must be made available within three business days. For records or documents that cannot be made available within three business days, a written description of the records, along with a timetable for inspection and copying, must be provided within three business days.<sup>26</sup> In lieu of providing printouts or copies of records or data, the city can provide access to records through a website accessible to the public.<sup>27</sup> The city must allow a person to bring a portable copying or scanning device and make copies that way instead of being charged the city's rates.<sup>28</sup> However, if confidential information must be removed from portions of a record, the city can provide redacted copies instead of allowing inspection of the record.<sup>29</sup>

Many cities are making routine records more accessible to the public by posting records on the city's website or allowing citizens to access records through the Internet. This makes getting information easier for citizens and saves staff time. Examples

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<sup>22</sup>O.C.G.A. § 50-18-71(c)(2).

<sup>23</sup>Ibid.

<sup>24</sup>O.C.G.A. § 50-29-2.

<sup>25</sup>O.C.G.A. § 50-18-77.

<sup>26</sup>O.C.G.A. §50-18-71(b)(1)(A).

<sup>27</sup>O.C.G.A. § 50-18-71(h).

<sup>28</sup>O.C.G.A. §50-18-71(b)(1)(B).

<sup>29</sup>Ibid.

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of records that many cities are posting on the Internet include meeting schedules, agendas, minutes, and city ordinances. However, thought should be given to the type of electronic access that will be offered, the type of records that will be made available electronically, and whether or not systems can be designed to ensure the security of city computer systems and records. To avoid any confusion about computer access, city officials may choose to designate by ordinance or resolution which records, if any, will be made available electronically via posting on a city website.

City officials should also emphasize to city employees the importance of good customer service. Almost all of the information contained in city records belongs to the public. Make sure that city employees understand that, regardless of the attitude of the party requesting the documents, these are public records and, as public employees, they are required to assist the requester. The requester should not be considered an adversary.

Although the records custodian may ask that open records requests be made in writing, he or she may not require them to be in writing. However, municipal employees that receive records requests should be instructed to make a written record of oral open records requests. Most requesters will readily provide a written request for two reasons: it protects from misunderstanding the request and helps focus the request to avoid excessive charges, when the request is for something other than meeting minutes, agendas, ordinances, etc. A written request also becomes an identifiable record, clearly triggering the three business day time period for access when received by the open records officer or records custodian designated by the city.<sup>30</sup> Finally, legal action to enforce compliance with the Open Records Act is only available when a written request is made and is not available for an oral request.<sup>31</sup>

To simplify the process, a city could provide the requester with a basic request form if he or she appears at city hall in person, or the form could be mailed, faxed, e-mailed, or posted on the city's website. City staff receiving the request should use a standard form for recording requests not received in writing. If a city uses e-mail or faxes in the normal course of business then it must accept faxed or e-mailed written records requests.<sup>32</sup>

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<sup>30</sup>O.C.G.A. §50-18-71(b)(2).

<sup>31</sup>O.C.G.A. §50-18-71(b)(3).

<sup>32</sup>O.C.G.A. §50-18-71(b)(2).

The city should update its records retention schedule and make sure that employees responding to records requests are familiar with the schedule. State law requires cities to have a records retention schedule,<sup>33</sup> and all department heads and records custodians should familiarize themselves with and follow the records retention plan adopted by the city. Within three business days of a request, the requested records should be found if practicable and any relevant exemptions identified. A file list or inventory will allow quicker access to records as well as complete and accurate responses to requests.

Cities should adopt a standard policy on charges for copying, administrative searches and other permitted fees and seek reimbursement of costs uniformly. Do not charge some citizens but not others for copies and administrative time unless the policy provides that no charge is imposed for minimal amounts of copying. The copying and administrative charges authorized by the open records law are not to be used to discourage frequent or unpleasant requesters. Rather, they are designed to ease the cost to the taxpayers of providing access to public records and it is the taxpayers who ultimately pay the cost of compliance beyond what is collected in fees from the requester.

Finally, resist taking advantage of technicalities and loopholes in the law. Trying to work around the law is the surest way to guarantee that new changes will be made that will make it even tougher for city officials to comply efficiently with the open records law. When faced with a gray area or a loophole, remember that the General Assembly and the courts are available to clear up the issue. Be assured that the courts have made it clear that they will always lean toward making access easier or records more open.

### ***Penalties and Fines for Failure to Comply with the Open Records Law***

In addition to the district attorney or solicitor, the Attorney General is authorized to file a criminal action against individuals who violate the open records law.<sup>34</sup> Anyone who knowingly and willfully violates the open records law, by refusing access, failing to provide documents within the requisite time, or “attempting to frustrate access by intentionally making records difficult to obtain or review”, may be found guilty of a misdemeanor and may be subject to a fine not to exceed \$1000.00 for the first

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<sup>33</sup>O.C.G.A. § 50-18-90 et seq.

<sup>34</sup>O.C.G.A. § 50-18-73(a).

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violation.<sup>35</sup> A civil penalty or criminal fine not to exceed \$2500.00 can be imposed for each additional violation committed within a twelve month period. Additionally, civil penalties may also be imposed by the court on any person who negligently violates the terms of the statute.<sup>36</sup> As with the open meetings law, the Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the municipal records custodian to release records and the city may be required to pay the complaining party's attorney's fees if the records custodian acted without substantial justification in denying an open records request.<sup>37</sup>

### ***Records That Must be Kept Confidential***

In addition to medical records, certain information that could lead to identity theft should not be released except under specific circumstances. Specifically, social security numbers, mother's birth name, credit card, debit card, bank account information, account number, including utility account number and password used to access the account, financial data, insurance information, medical information, unlisted telephone numbers if so designated in a public record, personal e-mail addresses, cellular telephone numbers, and month and date of birth must be redacted from all records before they are released.<sup>38</sup>

There are certain people, however, who may request and receive access to the personal and financial data generally exempted from access as discussed above. These are as follows:

- An individual or his or her legal representative may obtain records containing that individual's social security numbers, mother's birth name, credit card, debit card, bank account, financial data, insurance data, or medical information;<sup>39</sup>
- A government employee may obtain records containing social security numbers, mother's birth name, credit card, debit card, bank account, financial data, insurance data, or medical information if he or she is doing so for administrative or law enforcement purposes;<sup>40</sup>

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<sup>35</sup>O.C.G.A. § 50-18-74(a).

<sup>36</sup>Ibid.

<sup>37</sup>O.C.G.A. § 50-18-73.

<sup>38</sup>O.C.G.A. § 50-18-72(a)(20)(A).

<sup>39</sup>O.C.G.A. §§ 50-18-72(a)(20)(B)(v).

<sup>40</sup>O.C.G.A. §§ 50-18-72(a)(20)(B)(ii) and 50-18-72(a)(B)(iii).

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- Any individual may obtain date of birth and mother's birth name of a deceased individual<sup>41</sup>
- Consumer reporting agencies may obtain credit and payment information.<sup>42</sup>
- Tax matters made confidential by state law, such as certain occupation tax records, must not be released.<sup>43</sup> Trade secrets and certain proprietary information protected by the Georgia Trade Secrets Act of 1990 may not be released.<sup>44</sup>
- Records specifically required by federal statute or regulation to be kept confidential may not be released.<sup>45</sup>

Additionally, a representative of a “news media organization” gathering information for use in connection with news reporting may obtain access to an individual's social security number and day and month of birth by requesting such in a writing signed under oath attesting that they are a member of the media requesting such information for news gathering purposes.<sup>46</sup> This, of course, leads to the yet unanswered questions of what is a “news media organization” and what qualifies as “news gathering purposes.” But even representatives of a news media organization are not entitled to access the information listed above or the home address or home telephone number of public employees.<sup>47</sup> For the purpose of this exception to open records, “public employee” means any officer, employee or former employee of the State of Georgia or of any county, municipality or other political subdivision of this state. It also includes teachers in public, private and charter schools and employees of early care and education programs administered through the Department of Early Care and Learning.<sup>48</sup>

Finally, certain law enforcement related records must be kept confidential unless certain specific criteria are met. Booking photographs of persons arrested by law enforcement cannot be posted on a website by an arresting law enforcement

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<sup>41</sup>O.C.G.A. § 50-18-72(a)(20)(B)(vi).

<sup>42</sup>O.C.G.A. § 50-18-72(a)(20)(B)(vii).

<sup>43</sup>O.C.G.A. §§ 50-18-72(a)(43); 48-13-15.

<sup>44</sup>O.C.G.A. §§ 10-1-760 et seq. and 50-18-72(a)(34); Theragenics Corp. v. Georgia Department of Natural Resources, 545 S.E.2d 904 (2001).

<sup>45</sup>O.C.G.A. § 50-18-72(a)(1).

<sup>46</sup>Ibid.

<sup>47</sup>O.C.G.A. § 50-18-72(a)(21).

<sup>48</sup>Ibid.

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agency. This prohibition, however, does not apply to the state sexual offender registry and some other limited exceptions.<sup>49</sup> The arresting law enforcement agency also is prohibited from providing such photograph to any person who may publish the photograph and require a fee or other consideration for its removal.<sup>50</sup> Additionally, audio recordings of 9-1-1 calls which contain speech or cries of a person who died during the call or the speech or cries of a minor are prohibited from being released with only limited exceptions.<sup>51</sup>

### ***Records That Are Temporarily Exempt from Disclosure***

The following records may be (but are not required to be) withheld for a specific period of time.

Investigation of complaints against city employees. Records containing materials from investigations of complaints against public employees or relating to the suspension or termination of an employee are not subject to disclosure until 10 days after the investigation is complete or otherwise terminated.<sup>52</sup>

Appointment of the executive head. Records that would identify all of the applicants for the position of executive head of an agency (such as city manager) may be withheld until up to three finalists are selected, unless the public has had access to the application and interview process.<sup>53</sup> Fourteen days prior to the final decision, the names and application materials of as many as three finalists must be made available to the public upon request, unless the applicant no longer seeks the position.<sup>54</sup> However, the city may be required to provide information regarding the number of applicants and the race and gender of those applicants.

Land acquisition. Real estate appraisals, engineering or feasibility estimates, or other records relating to the acquisition of real property may be withheld only until the transaction has been completed or terminated.<sup>55</sup>

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<sup>49</sup>O.C.G.A. § 35-1-18.

<sup>50</sup>Ibid.

<sup>51</sup>O.C.G.A. § 50-18-72(a)(26.1).

<sup>52</sup>O.C.G.A. § 50-18-72(a)(8).

<sup>53</sup>O.C.G.A. § 50-18-72(a)(11).

<sup>54</sup>Ibid.

<sup>55</sup>O.C.G.A. § 50-18-72(a)(9).

Pending bids and proposals. Competing bids and proposals may be withheld until such time as the final award of the contract is made, the project is abandoned or the agency takes a public vote regarding the sealed bid or proposal, whichever comes first.<sup>56</sup>

Pending investigations. Records of law enforcement, prosecution, or regulatory agencies in any pending investigation, other than the initial incident report, may be withheld until the prosecution or any direct litigation is final or terminated.<sup>57</sup> However, note that this exception does not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution.

### ***Records That May Be Withheld***

Certain records may be, but are not required to be, withheld from disclosure.

Invasion of privacy. Records the disclosure of which would be an invasion of privacy according to Georgia case law may be withheld.<sup>58</sup>

Attorney-client privilege and attorney work product. Records subject to the attorney-client privilege and confidential attorney work product may be withheld.<sup>59</sup> However, if an attorney is conducting an investigation on behalf of an agency, the legal conclusions of the attorney are protected but the factual findings are not unless the investigation pertains to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee of the agency.

Security systems and neighborhood watch programs. An exemption from public disclosure is also provided for information related to neighborhood watch programs, public safety notification programs, and burglar alarm, fire alarm, or other electronic security systems.<sup>60</sup> Government records that contain names, home addresses, telephone numbers, e-mail addresses, security codes or other information related

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<sup>56</sup>O.C.G.A. § 50-18-72(a)(10).

<sup>57</sup>O.C.G.A. § 50-18-72(a)(4); Unified Government of Athens-Clarke County v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

<sup>58</sup>O.C.G.A. § 50-18-72(a)(2); Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991); Fincher v. State, 231 Ga.App. 49, 497 S.E.2d 632 (1998).

<sup>59</sup>O.C.G.A. §§ 50-18-72(a)(41) and 50-18-72(a)(42).

<sup>60</sup>O.C.G.A. § 50-18-72(a)(19).

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to those systems may be kept private. However, initial police reports and incident reports are subject to disclosure.

Carpools and rideshare programs. Records acquired by an agency to establish or implement a carpooling or ridesharing program may also be withheld.<sup>61</sup>

Accident reports. Georgia Uniform Motor Vehicle Accident Reports may be withheld unless the person requesting the accident report is named in the report, represents someone named in the report, or files a statement of need.<sup>62</sup> Additionally, certain other governmental agencies may acquire accident reports without filing a statement of need if they are obtaining the accident report in conjunction with an ongoing administrative, criminal, or tax investigation.<sup>63</sup> Law enforcement officers and staff are prohibited from soliciting, releasing or selling any information relating to the parties of a motor vehicle accident for personal financial gain.<sup>64</sup>

Security plans. Cities, and other agencies, need not disclose certain records, such as security plans, vulnerability assessments and blueprints, if the disclosure of such documents would compromise security against sabotage or criminal or terrorist acts.<sup>65</sup>

Emergency telephone calls. The name, address and telephone number of a person calling a public safety answering point can be redacted from E 9-1-1 records to prevent disclosing a confidential source, the existence of a confidential surveillance or investigation, or material which would endanger the life or physical safety of any person.<sup>66</sup> However, upon request, such information must be provided to the accused in a criminal case or such person's attorney.

Job references and examinations. Records of confidential evaluations submitted to an agency in connection with the appointment or hiring of a public officer or employee<sup>67</sup> need not be disclosed. Likewise, examinations prepared by an agency

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<sup>61</sup>O.C.G.A. § 50-18-72(a)(24).

<sup>62</sup>O.C.G.A. § 50-18-72(a)(5).

<sup>63</sup>O.C.G.A. § 50-18-77.

<sup>64</sup>O.C.G.A. § 33-24-53.

<sup>65</sup>O.C.G.A. § 50-18-72(a)(25).

<sup>66</sup>O.C.G.A. § 50-18-72(a)(26).

<sup>67</sup>O.C.G.A. § 50-18-72(a)(7).

and questions, scoring keys and other test materials that derive value from being unknown to the test-taker prior to administration of the test need not be disclosed.<sup>68</sup>

Recreation programs. Records of athletic or recreational programs that include information identifying any child 12 years of age or under by name, address, telephone number, or emergency contact are also not subject to disclosure.<sup>69</sup>

Trade secrets. When a business or individual provides to a city records containing trade secrets and the submission of those records is required by law, regulation, bid or request for proposal, the business or individual should identify the records to be kept confidential and attach to them an affidavit declaring specific information in those records to be trade secrets. If the city receives a request for those records, the city is supposed to notify the submitting person or business of the request and the city's intent to produce the records within ten days before disclosing the records. This provides the submitting person or business with an opportunity to seek a protective order in court. If the city determines the records do actually contain trade secrets, the city can withhold the records and the requester can seek to obtain a court order declaring that the requested records are not trade secrets.<sup>70</sup>

Economic development projects and job training. Documents maintained by the Department of Economic Development concerning a proposal to locate or expand a business that would involve the expenditure of more than \$25 million or the hiring of more than 50 employees need not be disclosed until a binding commitment has been secured or the project has been terminated.<sup>71</sup> Likewise, records related to a job training program operated under the State Board of the Technical College System of Georgia for such an economic development project need not be disclosed prior to a binding commitment having been secured.<sup>72</sup>

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<sup>68</sup> *Ibid*; O.C.G.A. §50-18-72(a)(38).

<sup>69</sup> O.C.G.A. §50-18-72(a)(27).

<sup>70</sup> O.C.G.A. §50-18-72(a)(34).

<sup>71</sup> O.C.G.A. §50-18-72(a)(46).

<sup>72</sup> O.C.G.A. §50-18-72(a)(47).

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## List of Common Exceptions to Disclosure

### ***Information the City is Prohibited from Disclosing***

- Social security numbers, mother's birth name, credit card information, debit card information, account numbers, bank account information, utility account numbers, passwords used to access accounts, financial data or information, insurance and medical records, unlisted telephone numbers, personal e-mail addresses, cellular telephone numbers, and month and date of birth. [§ 50-18-72(a)(20)(A)].

There are certain exceptions to the release of some social security number and day and month of birth information to “news media organizations”, an individual or his or her legal representative, government employees for specific purposes, consumer reporting agencies, and other narrow exceptions. [§§ 50-18-72(a)(20)(A); 50-18-72(a)(20)(B)(v); 50-18-72(a)(20)(B)(ii); 50-18-72(a)(20)(B)(vii); 50-18-72(a)(20)].

However, some of those exceptions have exceptions of their own, particularly when such information relates to public employees. [§ 50-18-72(a)(21)].

- Records containing tax matters or tax information that is confidential under state or federal law [§ 50-18-72(a)(43)].
- Data records, or information of a proprietary nature, that contain trade secrets and certain proprietary information protected by the Georgia Trade Secrets Act of 1990. [§ 50-18-72(34)].
- Records specifically required by federal statute or regulation to be kept confidential. [§ 50-18-72(a)(1)].

### ***Information that the City May Refuse to Disclose***

- Records consisting of confidential evaluations submitted to, or examinations prepared by, the city relating to the hiring or appointment of a public officer or employee. [§ 50-18-72(a)(7)].
- Records of which the disclosure would be an invasion of personal privacy according to Georgia case law. [§ 50-18-72(a)(2)].

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- The home address, home telephone number, e-mail address, and social security numbers of public employees and of private school teachers. [§ 50-18-72(a)(21)].
- Information related to neighborhood watch programs, public safety notification programs, burglar alarm, fire alarm, and other electronic security systems. [§ 50-18-72(a)(19)].
- Georgia Uniform Motor Vehicle Accident Reports may be withheld unless the person requesting the accident report is named in the report, represents someone named in the report, or files a statement of need. [§ 50-18-72(a)(5)].

## Open Records - FAQs

**Q:** Does a person making an Open Records request have to provide their name and/or contact information in order to make the request valid?

**A:** No, the Open Records Act does not create any requirement for a requestor to provide their name or contact information in order to make the request. However, in order to utilize the enforcement provisions of the law a written request must have been made. Written requests also allow the agency to provide an estimate of the cost to produce the requested records and contact information in the event that particular records are not readily available or information in certain records must be redacted. Except for simple requests for readily available records such as recent agendas and minutes or current ordinances, cities should have their open records officer or records custodian document all requests and retain a file copy of all responsive records produced. This documentation may be necessary if the city's responsiveness to the records request is challenged.

**Q:** Our city has a working draft of the budget but it has not been approved and we have received an open records request for the document. Does the working draft fall under the open records law?

**A:** Yes. The document does not fall within any of the exceptions in the open records laws. Although a document may only be a draft, unless it is protected by an exception the document would still be required to be released in an open records request.

**Q:** Are documents and emails sent from my personal computer/phone/tablet discussing city business subject to open records laws?

**A:** Yes, city officials and employees need to be aware that they cannot skirt state open records laws by utilizing personal computers, phones, tablets, or other similar devices to discuss and conduct city business in an effort to conceal records. If a city official or employee is documenting city business, that record is subject to the state open records law regardless of whether the device on

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which the documents are received, sent, written or stored are public or private devices.

**Q:** Are emails from my personal email account sent from my city issued computer/ phone/tablet discussing private matters subject to open records laws?

**A:** The answer to that is not completely clear from the face of the statute. The definition of “public record” applies to material prepared and maintained or received by an agency. The way the definition is written, particularly in light of the definition previously in the law, indicates that it may not be limited to information sent, received or generated in the course of the operation of a public office or agency. In order to avoid potential problems and the potential disclosure of personal information, city officials and employees should avoid or limit the use of any city issued computer, phone, tablet, or other similar device for personal discussions or business.

**Q:** Can the city require persons making open records requests to make requests in writing?

**A:** A request made under the open records law may be made to the custodian of a public record orally or in writing. The city may, but is not obligated to, require that all written requests be made upon a designated open records officer, but a city cannot require that all records be made in writing. However, the enforcement provisions are only available to enforce compliance and punish noncompliance when a written request is made consistent with the state law and are not available to those who make oral open records requests.

**Q:** Who takes the minutes of executive sessions and how are those minutes approved?

**A:** The law does not specifically address this. At the end of the day it will be up to the governing body of each agency to determine whether the regular clerk should accompany the body into executive session for the purpose of taking minutes or whether some other party to the executive session, such as the city manager or city attorney, should perform that function. As a general rule,

only those who are necessary to the discussion of the executive session topic should be in the executive session. This is critically important in the case of attorney-client discussions in order to preserve the attorney-client privilege. Given that most municipal charters enumerate as one of the clerk's duties maintaining city council records and other city records it seems justifiable for the clerk to continue performing this duty in executive session. Of course, if the executive session discussion is about the clerk or if it would otherwise be a conflict of interest or clear breach of confidentiality to include the clerk in the executive session then the clerk should be excluded. Executive session minutes could be approved in two different ways. One way would be to review and approve them in the next executive session. The other would be to approve them in the next regular, open meeting of the body but without making them public. Again, the statute does not speak directly to this issue. The city attorney should be consulted for guidance on each of these issues.

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### **Summary of Some Exceptions Outside the Open Records Act**

Though most exceptions to the Open Records Act are located in Title 50, there are several sections of the Georgia code that provide exceptions to the public disclosure requirement. The following examples are sections that might be applicable to cities.

1. Information provided by victims participating in a notification program is protected from disclosure. O.C.G.A. § 17-17-14.
2. Public school teachers, administrators and superintendents are required to undergo annual performance evaluations. These evaluations are protected from disclosure. O.C.G.A. § 20-2-210.
3. Library records that could identify the user of library materials are protected from disclosure. O.C.G.A. § 24-9-46.
4. Hospital plans, proposals, or strategies that are potentially commercially valuable and have not be made public, until such time as the plan, proposal, or strategy has been either approved or rejected. O.C.G.A. § 31-7-75.2.
5. Vital records such as birth certificates are protected from disclosure. O.C.G.A. § 31-10-25.
6. All work papers, analysis, information and documents from another state or any other materials produced or obtained pursuant to Chapter 2 of Title 33 of the Georgia Code, or any materials produced or obtained by the Commissioner of Insurance for analysis of the financial condition or market conduct of a company must be held confidential. O.C.G.A. § 33-2-14.
7. Records a city obtains from the insurance commissioner through the administration of a tax, such as the insurance premium tax, are protected from disclosure. O.C.G.A. § 33-8-10.
8. Records provided to the county board of tax assessors by a taxpayer, other than the tax return. These confidential records may include taxpayers' accounting records, profit and loss statements, and balance sheets. O.C.G.A. § 48-5-314.

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9. Information on gross receipts received by a business or practitioner provided to a city for purposes of occupation taxes is protected from inspection or disclosure. O.C.G.A. § 48-13-15.
10. A city that creates or maintains geographic information systems in electronic form is not required to disclose this information under the Open Records Act. The municipality may contract to distribute, sell, or provide access to such information and may license or establish fees for providing such records. O.C.G.A. § 50-29-2.
11. Records on candidates and peace officers prepared pursuant to the Georgia Peace Officer Standards and Training Act are considered confidential and may only be released to the candidate or peace officer to whom they pertain or to a law enforcement unit considering such person for employment. O.C.G.A. § 35-8-15.
12. Crime scene photographs and video recordings, including video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including, without limitation, where the deceased person's genitalia are exposed. O.C.G.A. § 45-16-27.

## The Georgia Open Records Act

### § 50-18-70.

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

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

- (1) "Agency" shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.
- (2) "Public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

### § 50-18-71.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted

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from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

- (b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.
- (B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

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- (2) Any agency that designates one or more records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.
  - (3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.
- (c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.
- (2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to

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exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

- (3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.
- (d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested records or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this paragraph or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds \$500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

- (e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.
- (f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.
- (g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.
- (h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall

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

- (i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.
- (j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

### § 50-18-72.

- (a) Public disclosure shall not be required for records that are:
  - (1) Specifically required by federal statute or regulation to be kept confidential;
  - (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;
  - (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;
  - (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving

such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-18;

- (5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party, to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:
  - (A) Has a personal, professional, or business connection with a party to the accident;
  - (B) Owns or leases an interest in property allegedly or actually damaged in the accident;
  - (C) Was allegedly or actually injured by the accident;
  - (D) Was a witness to the accident;
  - (E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
  - (F) Is a prosecutor or a publicly employed law enforcement officer;
  - (G) Is alleged to be liable to another party as a result of the accident;

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- (H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;
  - (I) Is gathering information as a representative of a news media organization; provided, however, that such representative submits a statement affirming that the use of such accident report is in compliance with Code Section 33-24-53. Any person who knowingly makes a false statement in requesting such accident report shall be guilty of a violation of Code Section 16-10-20;
  - (J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or
  - (K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;
- (6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by the Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, the Council of Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall provide data within the time limit established by the court for the limited purpose of such challenge. Neither the Council of Superior Court Clerks of Georgia

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nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data;

- (7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;
- (8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;
- (9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;
- (10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;
- (11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than

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have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

- (12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;
- (13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;
- (14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that

disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

- (15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;
- (16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;
- (17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;
- (18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural

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habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

- (19) Records that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;
- (20) (A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security

numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

- (B) This paragraph shall have no application to:
- (i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;
  - (ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;
  - (iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;
  - (iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;
  - (v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;
  - (vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;
  - (vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

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- (viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;
  - (ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or
  - (x) The disclosure of the date of birth within criminal records.
- (C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.
- (D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.
- (E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of

the methods of such access where not otherwise provided for, restricted, or prohibited;

- (21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, title, or offices. For the purposes of this paragraph, the term 'public employee' means any officer, employee, or former employee of:
- (A) The State of Georgia or its agencies, departments, or commissions;
  - (B) Any county or municipality or its agencies, departments, or commissions;
  - (C) Other political subdivisions of this state;
  - (D) Teachers in public and charter schools and nonpublic schools; or
  - (E) Early care and education programs administered through the Department of Early Care and Learning;
- (22) Records of the Department of Early Care and Learning that contain the:
- (A) Names of children and day and month of each child's birth;
  - (B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or
  - (C) Names or other identifying information of individuals who report violations to the department;
- (23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or

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adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

- (24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;
- (25) (A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:
  - (i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;
  - (ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;
  - (iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;
  - (iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and
  - (v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would

reveal information described in divisions (i) through (iv) of this subparagraph.

- (B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.
  - (C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;
- (26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (5) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;
- (26.1) In addition to the exemption provided by paragraph (26) of this subsection , audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress or cries in extremis 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 to the following, provided that the person seeking the audio recording of a 9-1-1 telephone call submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

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- (A) A duly appointed representative of a deceased caller's estate;
  - (B) A parent or legal guardian of a minor caller;
  - (C) An accused in a criminal case when, in the good faith belief of the accused, the audio recording of the 9-1-1 telephone call is relevant to his or her criminal proceedings;
  - (D) A party to a civil action when, in the good faith belief of such party, the audio recording of the 9-1-1 telephone call is relevant to the civil action;
  - (E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or
  - (F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, the audio recording of the 9-1-1 telephone call is relevant to the potential civil action;
- (27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;
- (28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project.
- (29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in

## Open Records

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excess of \$10,000.00 in the aggregate in a calendar year and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

- (30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;
- (31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;
- (32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;
- (33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;
- (34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited

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from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

- (35) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;
- (36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;
- (37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

- (38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;
- (39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;
- (40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies as provided by law;
- (41) Records containing communications subject to attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other

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judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

- (42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;
- (43) Records containing tax matters or tax information that is confidential under state or federal law;

- (44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;
- (45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;
- (46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding [sic] commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve the expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business; or
- (47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills,

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or other business methods and practices of a private entity. As used in this paragraph, the term “economic development project” means a plan or proposal to locate a business, or to expand a business, that would involve the expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.

- (b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.
- (c)
  - (1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.
  - (2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:
    - (A) A photograph;
    - (B) A photocopy;
    - (C) A facsimile; or
    - (D) Another reproduction.
  - (3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.
- (d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall

be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both.

### § 50-18-73.

- (a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.
- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of such decision.

### § 50-18-74.

- (a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willfully failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any

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person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

- (b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

### § 50-18-75.

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

### § 50-18-76.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other

## Open Records

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documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

### § 50-18-77.

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

## SAMPLE REQUEST FOR RECORDS

The City of \_\_\_\_\_ is dedicated to complying with the Georgia Open Records Act. In order to provide you with responsive records in as efficient and economical a fashion as possible, we request that you complete this written request for records. Precise identification of the records you seek will help us get the records to you as quickly as possible and for the least cost. Your contact information will allow us to provide you with an estimate of the cost to retrieve and prepare the records.

**Name of Requester:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Other Contact Information** \_\_\_\_\_

All of the following identify and limit the records I am requesting:

Subject Matter: \_\_\_\_\_

Department Creating or Maintaining the Record: \_\_\_\_\_

Dated between \_\_\_\_\_ and \_\_\_\_\_.

Contain the names or titles of the following person(s) \_\_\_\_\_

\_\_\_\_\_

Database containing the record: \_\_\_\_\_

Please indicate here if you would prefer to inspect records rather than receive copies.

I agree to pay any copying and/or administrative costs incurred in fulfilling my requests to the extent permitted by Georgia law. Such costs may include copying charges of \$.10 per page and administrative charges for search, retrieval, redaction, and other direct costs, such administrative charges not to exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request. (The requester is not charged for the first fifteen minutes of time.)

**Name (Print):** \_\_\_\_\_

**Signature:** \_\_\_\_\_

*Please return this form to:*

[Identify appropriate open records officers.]

## RECORD RETRIEVAL FEES

The following record retrieval fees may be charged:

Actual time of record preparation (varies)	_____ Hrs x \$ _____	= \$
Actual time of copying (varies)	_____ Hrs X \$ _____	= \$
\$0.10 per page copy	_____ Pages @ \$0.10	= \$
\$ #.00 first CD copy	_____ Copies @ \$ #.00	= \$
\$ #.00 each additional CD copy	_____ Copies @\$ #.00	= \$
Postage		= \$
Other costs:		= \$
Video costs:	_____ Copies @\$ #.00	= \$
<b>Total actual costs:</b>		<b>= \$</b>

The requester is not charged for the first fifteen minutes of time. Charges for time are not to exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request.

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## SAMPLE NEWS MEDIA REQUEST FORM

**Name of Requesting News Media Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

Pursuant to O.C.G.A. §50-18-72(a)(20)(A), I am formally requesting to inspect certain public records. In particular, records requested for inspection are:

\_\_\_\_\_

Personally appeared before the undersigned attesting officer, duly authorized to administer oaths, \_\_\_\_\_, who, after being duly sworn, deposes and on oath states the following:

- (1) I am a legally authorized representative of a news media organization and am gathering information for use in connection with news gathering and reporting; and
- (2) I understand that O.C.G.A. § 50-18-72(a)(20)(C) provides as follows:  
Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.
- (3) I further understand that pursuant to Code Section 16-10-20 false swearing is a felony in the State of Georgia, punishable by up to five years in prison.

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

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

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

**SAMPLE RESPONSE TO OPEN RECORDS REQUESTS**

Dear \_\_\_\_\_,

We have received your request dated \_\_\_\_\_, in which you asked for access to [public records/documents] in our possession. These records will be made available to you in Room \_\_\_\_\_ in City Hall [during normal business hours/as you requested]. [OR call Ms./Mr. \_\_\_\_\_ for an appointment]. Ask for Ms./Mr. \_\_\_\_\_.

As authorized by Code Section 50-18-71 of the Open Records Act, we will charge you a fee of \$ \_\_\_\_\_ per hour for search, retrieval, redaction, monitoring, and other direct administrative costs involved with your request for access to our records, after the first fifteen minutes of agency employee time expended. This fee represents the salary of the lowest paid full-time employee who possesses the necessary skill and training to perform the request. You will also be charged \$.10 for each page of our records you request to have copied, and may be charged an additional fee for certified copies or for other copies for which a fee is specifically authorized or otherwise provided for by law.

The estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 is \$\_\_\_\_\_.

Please realize that if you request copying or other administrative services for which charges may be assessed, then you will be required to provide payment for these services. If you fail to pay, the city may enforce its collection by all means available under the law.

Very truly yours,

(Name)  
Custodian of the Records

of \_\_\_\_\_  
(Agency)

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

## SAMPLE OPEN RECORDS POLICY

Purpose	I
Policy	II
Public Records	III
Ownership of Public Records	IV
Release of Information Procedures	V
Inspection of Records; fees; costs	VI
Exemptions	VII

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- I. **PURPOSE** - The purpose of this policy is to provide procedures for open records requests.
  
- II. **POLICY** - The City of \_\_\_\_\_ is committed to conducting city business in a manner that complies with all legal requirements, fosters citizen confidence in city government, and promotes efficient and effective governmental operations. The city recognizes the importance of communicating information to citizens and other interested parties and will cooperate in supplying requested information which is considered a matter of public record.
  
- III. **PUBLIC RECORDS** - O.C.G.A. § 50-18-70 (b)(2) defines a public record as all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency. Public records also means such items received or maintained by a private person or entity in the performance of a service or function for or on behalf of an agency and such items transferred to a private person or entity for storage or future governmental use.

O.C.G.A. § 50-18-70 et. seq., called the Georgia Open Records Act, establishes the right of every citizen to inspect and take a copy of all records except those specifically exempt from being open. When an agency receives a record request under the Open Records Act, it must comply with guidelines established in the law:

- The agency has three business days from the date of the request to determine if the requested records, or portions of such records, are open or closed.
- If the records are closed, the agency must respond in writing specifying the legal authority for restricting access to the records.
- Otherwise, the records are to be provided within the three-day period or a plan for providing access to the records provided to the requester.

**IV. OWNERSHIP OF PUBLIC RECORDS** – Records created, received or acquired by an employee of the City of \_\_\_\_\_ in the course of conducting government business are the property of the city and of the State of Georgia. Persons who create or acquire custody or possession of official records by virtue of their positions do not necessarily attain a proprietary interest in these records. City records are public records under the law and belong to the government rather than the employee. All city employees are responsible for reporting any actual or threatened loss or removal of records to the City Clerk, City Attorney, City Administrator, or Department Head.

**V. RELEASE OF INFORMATION PROCEDURES** - Formal requests for information under the Georgia Open Records Act pursuant to O.C.G.A. § 50-18-71 should be made in writing to the City Clerk. The City Clerk may accept requester's formal written request or shall provide an Open Records Request Form to the person making the request, which must be completed and returned to the City Clerk for further action. Informal requests may be made verbally. The public will **not** need to make a formal request for copies or viewing of routine ordinances, resolutions, agendas, maps, and minutes. Upon receipt of request, the City Clerk will notify the appropriate Department Head/Director/Division Head by Form ORR-1 for retrieval of information. When the requested information is compiled, all information along with Form ORR-1, reflecting attorney review and approval, approval by Department Head/Director/Division Head and an estimate of costs and time, will be submitted to the City Clerk. (See Form ORR-1) The City Clerk

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will certify information, issue invoice, and notify requester to make arrangements for submittal of information.

**Exception:** Standardized and routine open records requests such as accident, incident, and miscellaneous reports and general research and analysis requests from the Police and Fire Departments will be received and handled by the Police and Fire Departments. The Open Records Officers for these departments are : \_\_\_\_\_ . Also, open record requests pertaining to municipal court dispositions will be handled by the Clerk of Municipal Court.

Whenever either type of request is received, the Department Head/Director Division Head or designated person responsible for control of that information should ensure that the information is provided as quickly as possible. Within 48 hours the City Clerk will be advised of requests, which cannot be available to the requester within three (3) business days from the date of receipt. The advisory will include a description of the records requested and a timetable for availability. The City Clerk will provide a written notification of this information to the requester within 24 hours. In no event shall more than three (3) business days lapse before a written timetable of inspection is provided to the requester from the City Clerk or the information is provided to the requester by the appropriate Department Head/Director/Division Head.

Exceptions to the Open Records law are provided below. If there is a question as to whether or not information requested is subject to the Open Records law, the Department Head/Director/Division Head shall immediately contact the City Clerk. **In all cases, the City Attorney shall make the final decision if information is to be withheld and will provide a written response citing the appropriate code section, which exempts the records from being released.**

**VI. INSPECTION OF RECORDS; FEES, COSTS** – Pursuant to O.C.G.A. § 50-18-71, if an individual has the right to inspect a record, he/she also has the right to make extracts or to make copies of the records under the supervision of the custodian of the records. If information is to be released, the requester will be allowed access, during normal business hours, to the documents containing the requested information. Departments should decide what hours to make documents available and monitor and supervise the inspection of approved records.

City employees do **not** have to prepare reports, summaries or compilations of public records not in existence at the time of the request. However, city employees cannot 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 city's computer system so long as such commands or instructions can be executed using existing computer programs that the city uses in the ordinary course of business to access, support, or otherwise manage the records or data.

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

Copies must be furnished, if requested, at a charge of \$.10 cents per page. A written response to all formal requests must be prepared indicating the time and place the records may be inspected and the approximate cost involved. A fee may be charged for research, redaction, retrieval, monitoring, and other administrative costs involved with the request, after the first fifteen minutes of employee time expended. This fee should represent the salary of the lowest paid

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full-time employee who possesses the necessary skill and training to perform the request.

**Redaction of Information:** Many documents/materials are exempted from release in their entirety and these items may be completely removed from the record. Other documents/materials contain only specific information, which is exempted from release. In these instances, a photocopy of the document will be made and the specific exempted information will be blacked out with a heavy ink marker. The document photocopy will then be recopied to insure it cannot be read.

## VII. **EXEMPTIONS**

Types of exempted documents that are not subject to disclosure are defined in O.C.G.A. § 50-18-72. ***(In all cases, the City Attorney shall make the final decision if information is to be withheld and will provide a written response citing the appropriate code section, which exempts the records from being released)*** These are a few types of exempted documents:

1. Any record required by federal law or regulation to be kept confidential.
2. An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, and day and month of birth.
3. Medical files.
4. Records compiled for law enforcement or prosecution purposes to the extent that

production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material, which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation.

5. Records of law enforcement prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports, accident reports, and incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated.
6. Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee, and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged.
7. Real estate appraisals, engineering or feasibility estimates made relative to the acquisition of real property until such time as the property has been acquired or the proposed transition has been terminated or abandoned.
8. Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the city council takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.

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9. Those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency ("agency" is defined as a department, commission, board or authority, not just the city government); provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline from being considered further for the position rather than have the documents pertaining to the person released. If the agency has conducted its hiring or appointment process open to the public, it shall not be required to delay 14 days prior to taking final action. The agency shall not be required to release such records with respect to other applicants or persons under consideration. Upon request, the agency shall furnish the number of applicants and the composition of the list by such factors as race and sex.
  
10. Records that would reveal the names, home addresses, telephone numbers, security codes, or any other information collected by the city in connection with the operation of its alarm systems.
  
11. Records of public employees that would reveal the home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, or the identity of immediate family members or dependents of the public employee.

12. Records that would reveal the name, home address, home telephone number, employment telephone number, or hours of employment for any individual who is participating in, or has expressed interest in participating in a rideshare program.

Examples of those records considered exempt from being open are as follows:

1. Portions of personnel files that include medical records, evaluations and exams, and materials obtained to investigate disciplinary action until 10 days after issue is resolved.
2. Documents concerning on-going criminal investigations, the informants and, in exceptional cases, names of complainants other than the initial arrest reports, accident reports and incident reports.
3. Names or addresses of juvenile offenders.
4. Real Estate documents pending acquisition.

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*This model open records ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local open records ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model. This model ordinance has been developed to help cities designate an Open Records Officer and to comply with Georgia's Open Records Law, codified in O.C.G.A. § 50-18-70, et seq. Special thanks is given to the City of Griffin, Georgia for allowing GMA to borrow heavily from the city's Open Records Ordinance.*

## **MODEL OPEN RECORDS ORDINANCE**

### **ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING THE CODE OF \_\_\_\_\_, GEORGIA, AT CHAPTER \_\_\_\_\_, ADMINISTRATION, BY ESTABLISHING A NEW ARTICLE VI, OPEN RECORDS, TO COMPLY WITH O.C.G.A. §50-18-70, *ET SEQ.*, "THE GEORGIA OPEN RECORDS LAW", AS AMENDED IN THE 2012 SESSION OF THE GEORGIA GENERAL ASSEMBLY; DESIGNATING AN "OPEN RECORDS OFFICER" AND "ASSISTANT OPEN RECORDS OFFICER(S)" FOR SAID CITY; DEFINING THE DUTIES AND COMPENSATION THEREOF; PROVIDING FOR PUBLIC RECORD REQUESTS TO BE SERVED UPON THE OPEN RECORDS OFFICER OR, IN THE OFFICER'S ABSENCE OR UNAVAILABILITY, UPON AN ASSISTANT OPEN RECORDS OFFICER; PROVIDING FOR THE MANNER OF SERVING PUBLIC RECORDS REQUESTS ON THE OPEN RECORDS OFFICER; PROVIDING FOR NOTICE OF THE CITY'S OPEN RECORDS PROCEDURES; PROVIDING REASONABLE CHARGES FOR COMPLIANCE WITH PUBLIC RECORDS REQUESTS; TO REPEAL CONFLICTING CODE PROVISIONS, ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT WITH THE FOREGOING; TO RESTATE THE CODE OF \_\_\_\_\_, GEORGIA, AS MODIFIED HEREIN; TO ESTABLISH AND EFFECTIVE DATE; AND FOR OTHER PURPOSES.

**WHEREAS**, Georgia's Open Records Law, O.C.G.A. §50-18-70, *et seq.*, was amended in the 2012 Session of the General Assembly to enact new procedures for local governments (defined therein as "agencies") to comply with said law and to provide greater transparency in making public records available to the public for inspection and copying, which instills greater public trust in government;

**WHEREAS**, under the amended law, agencies may designate one or more "Open Records Officers" for the purpose of accepting service of written requests in order to assure timely response if made to the proper officer, who has been trained in the law and procedures for public records compliance;

**WHEREAS**, the City of \_\_\_\_\_, a Georgia municipal corporation, is an "agency" as defined at O.C.G.A. §50-18-70; and

**WHEREAS**, this City Council adopts as City public policy the statement of the General Assembly found at O.C.G.A. §50-18-70 (a);

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, GEORGIA, AND IT IS ESTABLISHED AS FOLLOWS:**

**SECTION ONE**

Chapter \_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_ is amended by adding a new Article, to be numbered Article \_\_\_\_\_, which shall include the following language:

Article \_\_\_\_\_

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Sec. \_\_\_\_\_. Short Title.

This Article shall be known as the “\_\_\_\_\_ Open Records Ordinance.”

Sec. \_\_\_\_\_. Open Records Officer.

There is hereby created the office of Open Records Officer. The City Manager is hereby designated as the City’s Open Records Officer; the Open Records Officer may designate, in writing, Assistant Open Records Officer(s) as required to perform the duties of his or her office. Before undertaking the duties of the office, the Open Records Officer and Assistant Open Records Officers shall take an oath, in writing, to diligently perform such duties. Compensation for the Open Records Officer and his or her Assistant Open Records Officers shall be initially recommended by the City Manager , approved by the City Council and scheduled on the City’s Pay Classification Plan, as from time to time amended. The Open Records Officer shall serve at the pleasure of the Board of Commissioners.

Sec. \_\_\_\_\_. Duties.

It shall be the duty of the Open Records Officer and his or her duly designated Assistant Open Records Officer(s) to accept written requests to inspect and copy public records, pursuant to O.C.G.A. §50-18-70, *et seq.*, and to produce to the requester all records responsive to a request within a reasonable amount of time not to exceed three (3) business days of receipt of a request, unless the time for response is extended in accordance with law. No request shall be deemed filed until served upon the Open Records Officer, either by hand delivery to the Officer at \_\_\_\_\_, Georgia \_\_\_\_\_; by certified United States mail, return receipt requested; by statutory overnight delivery; by email to \_\_\_\_\_; or by facsimile transmission to \_\_\_\_\_. Oral requests and requests, whether oral or in writing, served upon any other officer or employee of the City shall not be deemed filed, until the requester has filed his or her request, in writing, with the Open Records Officer. In

the absence or unavailability of the Open Records Officer<sup>1</sup>, an Assistant Open Records Officer shall perform the duties of the Open Records Officer. The absence or unavailability of a designated Open Records Officer shall not delay the City's response to a properly served request<sup>2</sup>.

Sec. \_\_\_\_\_. Request Response.

Upon receipt of a request<sup>3</sup>, it shall be the duty of the Open Records Officer to promptly ascertain the availability of all public records responsive to the request and to produce to the requester those records that can be located and produced within a reasonable time, not to exceed three (3) business days of receipt of a request. For purposes of computing the time within which a response must be made, the Open Records Officer shall not count the business day on which a request is received, nor any intervening Saturday, Sunday, or designated holiday on which City offices are closed for general business. Upon intake of a request, the Open Records Officer shall stamp the request with the date and time of receipt, and initial the request. In any instance where records are unavailable within three (3) business days of the request, it shall be the duty of the Open Records Officer to provide the requester with a written description of such records and a timeline for when the records will be available for inspection or copying and to provide the responsive records to the requester as soon thereafter as practicable. Such response shall also contain a good faith estimate of the cost to the requester for the search, retrieval, redaction, and production and copying of records.

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<sup>1</sup> It is the intent that the Open Records Officer be accessible within City Hall during the normal hours of general operation of the City's administrative staff, i.e. 8:30 a.m. to 5:00 p.m. Monday through Friday, except on recognized holidays and those days when City Hall is closed. The Open Records Officer shall coordinate his or her work schedule with the Assistant Open Records Officers to assure coverage within City Hall during normal hours at all times when the Open Records Officer is scheduled to be absent or unavailable for extended periods of time. Backup procedures will be implemented by the City Manager to assure such coverage by Assistant Open Records Officers during the Open Records Officer's unplanned absence or unavailability.

<sup>2</sup> By law, notice of the designation of Open Records Officers shall be posted on the official bulletin board at City Hall, in \_\_\_\_\_ as legal organ of \_\_\_\_\_ County, and on the City's website. In addition, City officers, department managers, and administrative staff will be instructed on how to assist and direct persons desiring to request inspection and copying of public records.

<sup>3</sup> To further assist persons desiring to inspect records, a request form will be available at City Hall and on the City's website.

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The Open Records Officer shall confer with every officer or department manager of the City, as necessary, to ascertain the existence of public records responsive to a request (including electronically-stored information), and it shall be the duty of every City officer and department manager to confer with and provide records, or true and correct copies of the originals thereof, to the Open Records Officer promptly, time being of the essence. Upon receipt of a public record responsive to a request, the Open Records Officer shall determine, in consultation with the City Attorney, if the record is exempt from disclosure by order of a court of this state or by law; if the record is exempt from disclosure, the written response by the Open Records Officer shall set forth the specific legal authority under which withholding of inspection of the record is claimed. The Open Records Officer shall maintain a log or other documentation of his or her due diligence to comply with a proper request.

Sec. \_\_\_\_\_. Fees.

The Open Records Officer shall further have the duty to collect from a requester a reasonable charge for the search, retrieval, redaction, and production/copying of records, utilizing the most economical means available to identify and produce non-excluded records. The charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the Open Records Officer, has the necessary skill and training to perform the request; provided, however, no charge shall be made for the first quarter hour. In addition thereto, where certified copies of specific records are sought, the fees for certified copies prescribed by law shall apply; otherwise, a fee for the copying of records shall not exceed 10¢ per page for letter or legal size documents or, in the case of other documents and electronic records, the actual cost of reproducing the document or media on which the records or media are produced. It shall be the right of the requester, at the time of inspection, to make photographic copies or other electronic reproductions of records, at his or her own expense, using suitable portable devices brought to the place of inspection. Whenever any person has requested to inspect and copy public records and received a written response estimating the cost of the search, retrieval, redaction, and production/copying of the

records responsive to the request, and the City has actually incurred such costs but the requester fails to inspect or accept copies of the records, the Open Records Officer shall be authorized to collect such charges in any manner authorized by law.

In any instance in which the Open Records Officer has estimated costs in excess of \$25.00 for responding to a request, the Open Records Officer may defer the search, retrieval, redaction, and production/copying of the records until the requester has stated, in writing, his or her willingness to pay an amount equal to the estimate of costs. In any instance in which the estimated costs exceed \$500.00, the Open Records Officer shall insist, in writing, upon prepayment of the estimated costs prior to beginning search, retrieval, redaction, production or copying of the records. In any instance in which a requester has outstanding costs owing to the City for a previous records request, the Open Records Officer shall insist upon prepayment of the outstanding costs and estimated costs prior to beginning search and retrieval.

### Sec. \_\_\_\_\_. Litigation.

Requests by civil litigants, or their counsel of record, in any ongoing civil action or administrative proceeding shall be made in writing and shall include the style of the action or proceeding, the names and addresses of all parties and, if a party is represented by counsel, the name, address, and telephone number of the party's attorney; a copy of the request shall be served by the requester upon all parties or their counsel of record in the action or proceeding contemporaneous to filing the written request with the Open Records Officer. The Open Records Officer shall make duplicate set(s) of records provided in response to the request available to all parties or their counsel for the cost of copies only, unless a party or its counsel elects not to receive the records and pay the copying charge. If the City is a party to the action or proceeding, a set of responses shall be provided to counsel for the City at no charge.

### Sec. \_\_\_\_\_. Training.

The Open Records Officer and Assistant Open Records Officer(s) shall, prior to assuming the duties of their office, undergo a course of training in public records

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management and specifically compliance with the Georgia Open Records Law, O.C.G.A. §50-18-70, *et seq.*, as approved by the City Manager, in consultation with the City Attorney. It shall be the responsibility of the City Manager, as the City's Public Records Manager designated at Sec. \_\_\_\_\_ of the Code of \_\_\_\_\_, Georgia, and the Open Records Officer, at least annually, to conduct a workshop for City officers and department managers on the minimum requirements and procedures for public records management and open records disclosure, including the penalties or civil fines that may be imposed for violating Georgia's public records laws.

Sec. \_\_\_\_\_ - \_\_\_\_\_. Reserved.

## SECTION TWO

All ordinances and Code sections, or parts thereof, in conflict with the foregoing are expressly repealed.

## SECTION THREE

Should any provision of this ordinance be rendered invalid by any court of law, the remaining provisions shall continue in force and effect until amended or repealed by action of the municipal governing authority.

## SECTION FOUR

Except as modified herein, The Code of \_\_\_\_\_, Georgia, is hereby reaffirmed and restated. The codifier is hereby granted editorial license to include this amendment in future supplements of said Code by appropriate section, division, article or chapter.

## SECTION FIVE

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Mayor

City of \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of Council

## Government in the Sunshine

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## Part III - Records Management

### *Overview of the Georgia Records Act*

The Georgia Records Act deems all records created or received in the performance of a public duty or paid for by public funds to be public records.<sup>1</sup> Such records can only be destroyed or placed in the hands of private individuals, such as a record storage company or historical society, pursuant to a records retention schedule. Removing, altering or destroying records except as authorized by the retention schedule is a misdemeanor.<sup>2</sup>

It is the responsibility of the local government officer responsible for maintaining the local government's records to recommend a retention schedule to the governing authority.<sup>3</sup> The schedule must include an inventory of the type of records maintained and the length of time each type of record is to be maintained. Retention periods are to be based on the legal, fiscal, administrative, and historical needs for the record. The governing body of a municipality, county or consolidated government is required to approve by resolution or ordinance a records management plan which includes, at least, the following:

1. The name or title of the person responsible for records management;
2. Each retention schedule approved by the governing body; and
3. Provisions for the maintenance and security of the records.

The Secretary of State, through the Georgia Archives, coordinates records management matters, provides local governments with a list of common types of records maintained and recommended retention periods and provides training and assistance as required. The Georgia Archives advises local governments of records of historical value that may be deposited in the state archives. All other records are to be maintained by the local government.

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<sup>1</sup>O.C.G.A. §§ 50-18-99 and 50-18-102.

<sup>2</sup>O.C.G.A. § 50-18-102.

<sup>3</sup>O.C.G.A. § 50-18-99.

# Government in the Sunshine

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## ***Record Management***

The first step in adopting a record retention and management policy is to determine what types of records the city maintains and the format in which they are maintained. All formats in which records are kept need to be considered. Additionally consideration must be given to where the city's records may exist. They could be on network servers, desktop hard drives or laptops, and in databases, backup systems, disaster recovery systems and archival storage. City records could also be on removable media such as flash drives, on home computers, on cell phones or smart phones, on tablets, on digital telephone systems, or on internet or intranet systems.

When searching for records responsive to an open records request or subpoena, a city or any other agency subject to the Open Records Act must make sure it has checked all of these sources of records that could reasonably be expected to have responsive records.

Once the city knows what kinds of records it creates, receives or maintains it can then determine how, where, and for how long to keep such records and adopt a policy accordingly. The sample record retention schedule provided by the Georgia Archives may be used as a model and modified to suit the needs of the city. Consult your city attorney for further information and assistance in creating such a policy.

Records are generally classified as transitory, temporary short-term, temporary long-term, permanent, and vital. Transitory records are those that are of only short-term interest and have no documentary or evidentiary value. Examples may include calendars, blank forms, and event notices. Temporary short-term records are usually considered those with a useful life of less than 15 years, such as quarterly budget reports, and temporary long-term records are those that need to be kept 15 years or more but not permanently. Permanent records are things such as minutes, resolutions and ordinances. Specific laws may dictate how long certain records need to be kept.

Vital records are those that are necessary to the resumption or continuation of government operations, to the recreation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the citizens of the government. Vital records should be created in duplicate and stored off-site. To determine what is a vital record think about what information would be necessary to get the city back up and running after a major natural disaster or if city hall was destroyed. Some cities have entered into agreements with cities many states away under which the two cities agree to store back-up copies of each one's vital records.

## Records Retention

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The thinking is that if a natural disaster hits one part of the country it is unlikely to also hit the city where the back-up records are stored.

Note that it is the substance of a record that determines its classification under the record retention schedule, not the format in which the record is kept or where it is kept. In addition to the required retention schedule, a city should have a general records management policy addressing the use, creation, deletion, destruction, archiving and retrieving of documents. Given the reliance of most agencies on electronic records, the assistance of competent information technology professionals is critical. Once a policy has been adopted, it is also important to hold regular training sessions for employees to ensure that they follow the policy.

# Government in the Sunshine

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### **Portions of the State Records Management Act**

§ 50-18-94.

It shall be the duty of each agency to:

- (1) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities;
- (2) Cooperate fully with the division in complying with this article;
- (3) Establish and maintain an active and continuing program for the economical and efficient management of records and assist the division in the conduct of records management surveys;
- (4) Implement records management procedures and regulations issued by the division;
- (5) Submit to the division, in accordance with the rules and regulations of the division, a recommended retention schedule for each record series in its custody, except that schedules for common-type files may be established by the division. No records will be scheduled for permanent retention in an office. No records will be scheduled for retention any longer than is absolutely necessary in the performance of required functions. Records requiring retention for several years will be transferred to the records center for low-cost storage at the earliest possible date following creation;
- (6) Establish necessary safeguards against the removal or loss of records and such further safeguards as may be required by regulations of the division. The safeguards shall include notification to all officials and employees of the agency that no records in the custody of the agency are to be alienated or destroyed except in accordance with this article; and
- (7) Designate an agency records management officer who shall establish and operate a records management program.

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## § 50-18-99.

- (a) As used in this Code section, the term:
- (1) "Governing body" means the governing body of any county, municipality, or consolidated government. The term includes school boards of this state.
  - (2) "Office or officer" means any county office or officer or any office or officer under the jurisdiction of a governing body which maintains or is responsible for records.
- (b) This article shall apply to local governments, except as modified in this Code section.
- (c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.
- (d) Prior to July 1, 1983, each office or officer shall recommend to the governing body a retention schedule. This schedule shall include an inventory of the type of records maintained and the length of time each type of record shall be maintained in the office or in a record-holding area. These retention periods shall be based on the legal, fiscal, administrative, and historical needs for the record. Schedules previously approved by the State Records Committee will remain in effect until changed by the governing body.
- (e) Prior to January 1, 1984, each governing body shall approve by resolution or ordinance a records management plan which shall include but not be limited to:
- (1) The name of the person or title of the officer who will coordinate and perform the responsibilities of the governing body under this article;
  - (2) Each retention schedule approved by the governing body; and
  - (3) Provisions for maintenance and security of the records.
- (f) The Secretary of State, through the division, shall coordinate all records management matters for purposes of this Code section. The division shall provide local governments with a list of common types of records maintained together with recommended retention periods and shall provide training and

## Records Retention

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assistance as required. The division shall advise local governments of records of historical value which may be deposited in the state archives. All other records shall be maintained by the local government.

- (g) Except as otherwise provided by law, ordinance, or policy adopted by the office or officer responsible for maintaining the records, all records shall be open to the public or the state or any agency thereof.

### § 50-18-102.

- (a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.
- (b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.
- (c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.
- (d) No person acting in compliance with this article shall be held personally liable.



