

# GEORGIA'S OPEN MEETING AND RECORDS LAWS

Updated, 2012



Georgia First  
Amendment  
Foundation

# Significant changes

There are significant changes in both records and meetings laws. We'll go over records first, then penalties, then meetings. Penalties are the same for records and meetings.

Existing law is represented on these slides in white text; **changed law or new law in gold text.**

# Open Records

## WHAT IS A RECORD:

- Documents
- Papers
- Letters
- Maps
- Books
- Tapes
- Photographs
- Computer-based or generated information
- Data
- Data fields
- Email

# Open Records

## WHO IS SUBJECT TO OPEN RECORDS:


- State departments, agencies, boards, bureaus, offices, commissions, public corporations and authorities
- Counties, municipalities, school districts, other political subdivisions
- Departments, agencies, boards, bureaus, commissions, authorities and similar bodies of counties, municipalities and other political subdivisions
- City, county regional or other authority established by law
- Non-profits receiving 1/3 of funds from taxpayers
- Associations of counties, municipalities and school boards that receive 1/3 of funding from political subdivisions
- Records of private persons or entities performing service or function on behalf of an agency or for storage or future governmental use.

# Process for records requests


Written request required for enforcement;  
custodian may be designated



Records produced for inspection within  
reasonable time, not to exceed three days



If some but not all are available within three  
days, rolling production is required



If records are unavailable within three days but  
exist, agency must produce by three-day limit  
the description and timeline and provide  
records as soon as practicable.

# Costs for records



Reasonable charge for search, retrieval, redaction, copying, production

Can't exceed prorated hourly salary of lowest-paid qualified employee

Fee for copying not to exceed 10 cents a page for letter or legal copies


Other costs based on actual cost of producing or media

# Open Records

## SOME COST CONSIDERATIONS:

- Agency is not required to charge
- Inspection is allowed; you can reproduce with your own portable device
- If it can be made available via electronic means, it should be
- No fee for review of records that take less than quarter hour to provide
- Agency shall utilize the most economical means available for producing and providing public records

# Payment for records



If cost is to exceed \$25 or other limit set by requester, agency may await approval by requester before proceeding

If cost is to exceed \$500, agency may insist on pre-payment of costs prior to producing records

If requester has failed to pay previously, up-front payment can be required



# Open Records

## DATA AND COMPUTER RECORDS:

- Agencies' use of electronic record-keeping shall not erode the right to public records
- Agencies must produce electronically unless requester prefers print or copying is needed for redaction
- Inputting range, filter, search information is not "programming" or "creating new record" if using existing programs used by agency

# Open Records

## DATA AND COMPUTER RECORDS:

- Requester may ask for electronic records, data and data files in standard export formats
- For email and other electronic records, requester should provide specifics such as name, title and databases if possible
- Agency may put records on website, but that should not override request for underlying data

# Open Records

## DATA AND COMPUTER RECORDS:

- If agency contracts with private vendor, the arrangement shall not impede public record access

# Open Records

EXEMPTIONS: ALL REMAIN,  
INCLUDING

- Individual personal info: social security number, bank account, medical records, tax info, mother's maiden name, credit reports, military discharge, cellphone, personal email
- Employee protections apply to retirees
- Exemptions do not apply to records that do not specifically identify public employees by their jobs, titles or offices.

# Open Records

EXEMPTIONS: ALL REMAIN,  
INCLUDING

- Records to protect the vulnerable: rape victims, children, confidential informants, whistleblowers, HIV patients, in certain circumstances (Some exceptions for media using affidavit)
- Stuff restricted by the feds, including HIPAA, FERPA

# Open Records

EXEMPTIONS: ALL REMAIN,  
INCLUDING

- Property acquisition, until completed or closed (but vote must be taken in public)
- Pending investigation, until closed case or final appeal
- Trade secrets, if corporation designates in advance

# Open Records

EXEMPTIONS: ALL REMAIN, INCLUDING  
LEGAL

- Attorney client privilege
- Attorney work product
- Does not include facts of an investigation conducted on behalf of agency by attorney once litigation is concluded or in absence of litigation
- Pending litigation
- Pending prosecution or investigation – but not records in possession of the subject of an investigation

# Open Records

## NEW EXEMPTIONS

- Some records of Department of Early Care and Learning
- Records of the State Department of Economic Development relating to negotiations on major projects. Within 5 days of binding commitment, state must give notice on website and legal ad; records become open.
- Some records related to “Quickstart” training program for economic development projects.



# Open Records

## OTHER KEY CHANGES:

- Requests must be accepted by email if email is regularly used
- Absence of designated custodian cannot delay request
- Strong preamble

# Open Records

## ENFORCEMENT AND PENALTIES:

- Criminal standard is knowingly and willfully violating the law
- Civil standard is negligently violating the law
- Fines of up to \$1,000 for first violation and up to \$2,500 for subsequent violations
- Recovery of reasonable attorneys fees allowed

# Open Meetings

## WHAT'S OPEN:

- City councils
- County commissions
- Regional development authorities
- Library boards
- School boards
- Commissions or authorities established by state or local government
- Committees of government
- Planning commissions
- Zoning boards
- Most committees of university system
- Non-profit corporations operating public hospitals
- Non-profits receiving 1/3 of funds from taxpayers

# • Open Meetings

## WHAT'S NOT COVERED:

- Georgia legislature and committees (open by tradition except conference committees)
- Judicial proceedings (open by common law)
- GBI, Pardons and Parole
- Inspection of physical facilities or property
- Statewide or regional training meetings
- Meetings with legislative and executive branch in state or federal offices
- Travel to a meeting, so long as no business conducted
- Civic, ceremonial functions, so long as no business conducted
- Medical committees and some meetings of hospital authorities
- Mediation

# Open Meetings

## REASON FOR EXECUTIVE SESSION:

- Attorney-client discussion pertaining to pending litigation, settlement discussions or judicial actions
- Personnel matters including interviewing agency heads
- Discussion of records exempted from public records law if no reasonable way to discuss without disclosing
- Real estate acquisition except final vote must be public
- Settlement negotiations except final vote must be public
- Interviews for executive heads of agencies

# Process for executive session


Majority vote of quorum required with reason specified



Minutes kept during exec session for possible challenge



Continued out-of-order discussion causes adjournment of executive session



Votes must be made in open session



Affidavit must be filed

# Open Meetings

## OTHER KEY CHANGES:

- Time to challenge a meeting extended up to as much as six months after illegal activity
- All votes must be taken in public, including property votes
- Teleconference allowed in emergency but must be open

# Open Meetings

ENFORCEMENT AND PENALTIES ARE  
THE SAME AS FOR RECORDS



# HIRING AND DISCIPLINE

- Candidates for executive heads can be secret until 14 days before vote; at that point up to three finalists (and associated records) must be made public
- Interviews can be private
- Period for college presidents is 5 days, not 14
- Disciplinary records are open ten days after presented to an agency or officer for action or investigation closed