

Georgia First Amendment Foundation

Why Transparency Matters

"When there is not openness, corruption grows rapidly."

-- Vernon Keenan, director of the Georgia Bureau of Investigation, 2006

"Knowledge will forever govern ignorance.

And a people who mean to be their own governors must arm themselves with the power which knowledge gives."

-- James Madison, 1822

2014 Open Records Overview - Hyde Post

Gfaf.org



GEORGIA FIRST AMENDMENT FOUNDATION



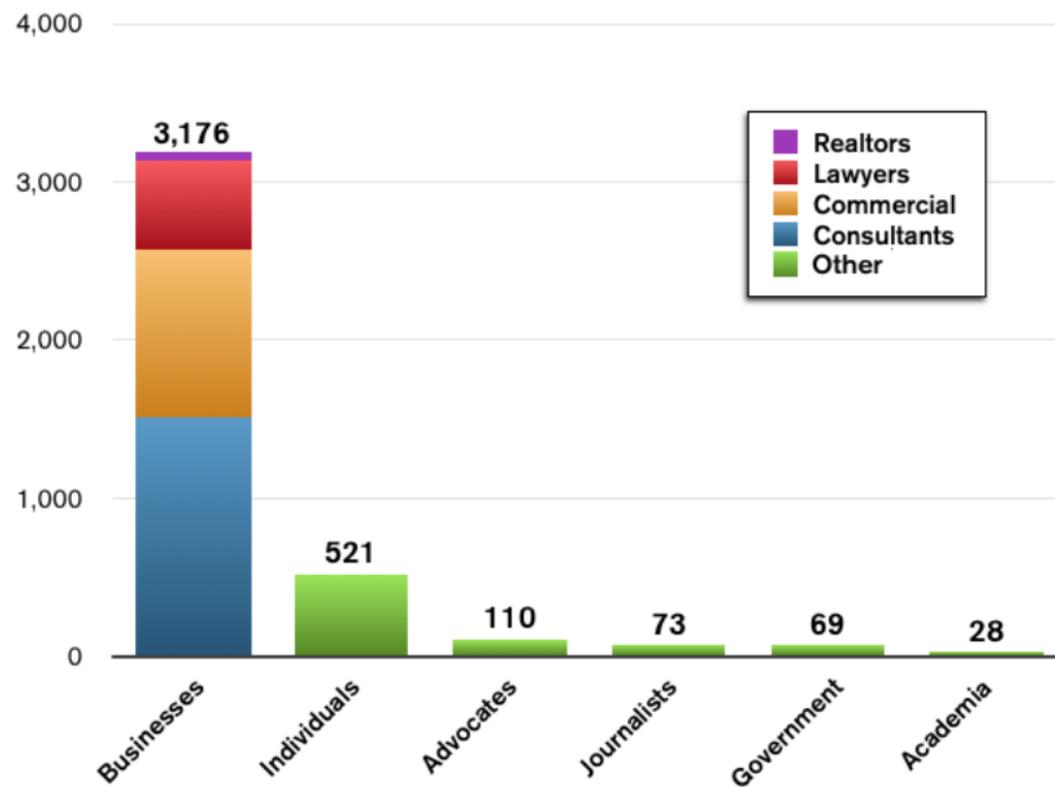
The intent of the Open Records Law

- ▶ O.C.G.A. § 50-18-70
- ▶ 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.

Who makes open records requests?

From a study done of New York State open records requests

FOIL Requests to NYS DEC HQ by Source of Request, 2013





What is a public record?

The act is about 10,000 words long...or about 24 pages. About 8 pages define what's public and how to ask for it and the penalties for violating the law. The rest have to do with what's exempt.

The statute lists the following as public records.

See O.C.G.A. § 50-18-70(b)(2).

- a. Documents;
- b. Papers;
- c. Letters;
- d. Maps;
- e. Books;
- f. Tapes;
- g. Photographs;
- h. Computer based or generated information;
- i. Data;
- j. Data fields;
- k. Email; or
- l. Similar material prepared and maintained or received in the course of the operation of a public office or agency.

Whose records are public records?

- See O.C.G.A. § 50-14-1 in the Open Meetings Act which contains the list of public agencies covered by the sunshine laws. See O.C.G.A. § 50-18-70(b)(1).

(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.....non-profits which get more than a 1/3 or more of their funds from government (except certain health care institutions).



Charging for Records

The public agency is not required to charge. O.C.G.A. § 50-18-71©.

The public agency has the right to assess a copying charge of up to \$.10 cents per page, as well as reasonable search and retrieval fees. See O.C.G.A. § 50-18-71 (c)(d).

The first 15 minutes of search and retrieval time is free. See O.C.G.A. § 50-18-71 (c).

The charges for finding and segregating the public records that are requested must be based on the rate of pay of the lowest paid employee authorized to search for and organize those records. See O.C.G.A. § 50-18-71 (c).

A “fee may not be imposed under O.C.G.A. § 50-18-71 when a citizen seeks only to inspect records that are routinely subject to public inspection, such as deeds...” *McFrugal Car Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992).

If cost is to exceed \$25 or other limit set by requester, agency may await approval by requestor before proceedings. See O.C.G.A. § 50-18-71 (d).

If cost is to exceed \$500, agency may insist on pre-payment of costs prior to producing records. See O.C.G.A. § 50-18-71 (d).

If the requestor has failed to pay previously, up-front payment can be required. See O.C.G.A. § 50-18-71 (d).



Responding to an Open Records Request

- ▶ 1. While verbal open records requests are permissible, to the extent a challenge may ensue, a written request is recommended. Requests must be accepted by email if email is regularly used. See O.C.G.A. § 50-18-71 (b).
- ▶ 2. The agency may designate a public records custodian, and must notify the county's legal organ of that designation. If the public agency has a website, the agency must post the custodian designee on the website. Absence of a designated custodian cannot delay a request. See O.C.G.A. § 50-18-71 (b).
- ▶ 3. The individual in control of the records has a reasonable time, not to exceed three business days, to determine whether the requested records are subject to access and to permit inspection and copying. See O.C.G.A. § 50-18-71 (b).



Responding to an Open Records Request

- 4. If some but not all records are available within three days, rolling production is required. See O.C.G.A. § 50-18-71 (b).
- 5. Where responsive records exist, but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying shall be provided within that period, and the records must be provided as soon as practicable. See O.C.G.A. § 50-18-71 (b).
- 6. If access to the requested records is denied in whole or in part, the specific legal authority exempting such records from disclosure must be specified by Code section, subsection, and paragraph in writing. See O.C.G.A. § 50-18-71(d).
- 7. If a requestor, who is involved in litigation with the public agency, seeks public records, she/he/it must send a copy a copy of the records request to the lawyer for the public agency at the same time the records request is made. See O.C.G.A. § 50-18-71(e).

If you don't receive a timely response, tell the local paper, call Stefan Ritter at the AG's office or call our hotline – 404-525-3646. Make some noise.



Computer Records are Public Records

- Agencies' use of electronic record-keeping shall not erode the right to public records. See O.C.G.A. § 50-18-71(f).
- Agencies must produce records electronically unless requester prefers or copying is needed for redaction.
- Inputting range, filter, search information is not “programming” or “creating new records” if using existing programs used by agency. See O.C.G.A. § 50-18-71(f).
- Requester may ask for electronic records, data and data files in standard export formats. See O.C.G.A. § 50-18-71(f).
- For email and other electronic records, requester should provide specifics such as name, title and database if possible. See O.C.G.A. § 50-18-71(g).
- Agency may put records on website, but that should not override request for underlying data. See O.C.G.A. § 50-18-71(f).
- If agency contracts with private vendor, the arrangement shall not impede public record access. See O.C.G.A. § 50-18-71(f).



Closing Meetings



- ▶ 1. If a meeting is closed to the public, the majority of the quorum must vote in public to close, the meeting's minutes shall reflect the names of those voting for closure, and the specific reason for closure shall be entered upon the minutes. These parts of the meeting's minutes are available to the public. See O.C.G.A. § 50-14-4(a).

- ▶ 2. When a meeting is closed pursuant to the open meetings act, the meeting's chairperson must execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting was devoted to matters within one or more exceptions provided by law and identifying the specific relevant exception. False swearing is a felony. See O.C.G.A. § 50-14-4(b). See **EX. A.**



Closing Meetings

- ▶ Minutes **MUST** be kept during closed session for a possible challenge. See O.C.G.A. § 50-14-1(e)(1)©.
- ▶ Continued out of order discussion causes adjournment of executive session. See O.C.G.A. § 50-14-4.
- ▶ Votes must be taken in open session. O.C.G.A. § 50-14-1(b).



Penalties for Violations

-The criminal standard for violations is knowingly and willfully violating the law. See O.C.G.A. §§ 50-18-73, 74.

-The new civil standard for violations is negligently violating the law. See O.C.G.A. §§ 50-18-73, 74.

-Fines of up to \$1,000 for first violation and up to \$2,500 for subsequent violations. See O.C.G.A. § 50-18-74.

-Violators are subject to paying all litigation costs. "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." See O.C.G.A. § 50-18-73.

-The superior courts have jurisdiction in law and equity to hear Actions pertaining to violations of the Open Records Act. See O.C.G.A. § 50-18-73 (a).



Legal Protection for Openness

- (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.



Exemptions

- 1. Medical records. See O.C.G.A. § 50-18-72 (a)(2).
- 2. Confidential personnel evaluations from outside sources (and some other personnel documents). See O.C.G.A. § 50-18-72 (a)(7).
 - a. Records relating to the discipline of public employees are to be released 10 days after the materials are presented to the agency for action, or 10 days after the investigation terminates. See O.C.G.A. § 50-18-72 (a)(8).
- 3. In 1992, the state legislature enacted an optional special procedure for access to information regarding those who were applying for, or were being considered for, positions such as a department head or county manager or county administrator. See O.C.G.A. § 50-18-72 (a)(11). Upon a request to the agency:
 - a. At least 14 calendar days prior to the meeting at which the final action or vote is to be taken for the position, the agency shall release *all* documents which came into its possession with respect to as many as three persons considered finalists for the job. There is a special provision for university presidents which only requires a 5 calendar day release period. § 50-18-72 (a)(11).
 - b. An applicant at this time can withdraw his/her name from consideration and thereby avoid disclosure, in which case the identity and records of the next most qualified candidate are to be disclosed. O.C.G.A. See § 50-18-72 (a)(11).



Exemptions

- 4. Public disclosure is not required for trade secrets which are submitted to public agencies under requirement of law, if trade secret designation is designated in advance.. Georgia law has defined a trade secret as a secret process not patented but known only to certain individuals using it in trade having commercial value, as opposed to the mere privacy which an ordinary commercial business is carried on. See O.C.G.A. § 50-18-72 (a)(34).
- 5. Public disclosure is not required for real estate records pertaining to acquisition until after the transaction. Public disclosure is not required for engineers' costs estimates and rejected or deferred bid proposals concerning road projects until such time as the final award is made. See O.C.G.A. § 50-18-72 (a)(9).
- 6. Public disclosure is not required for criminal investigation records when they concern a case still under active investigation, but not if records are in the possession of the subject of an investigation. See O.C.G.A. § 50-18-72 (a)(4).
- a. Regardless of the status of an investigation, the initial police arrest and an initial incident report are open records and must be disclosed. Because the Act also covers audio and video records, 911 calls and videos of traffic stops, etc., must be disclosed as well. Individual accident reports are available under the open records act upon the submission of a written statement of need by the requesting party. See O.C.G.A. §§ 50-18-72 (a)(4)(5)(26).

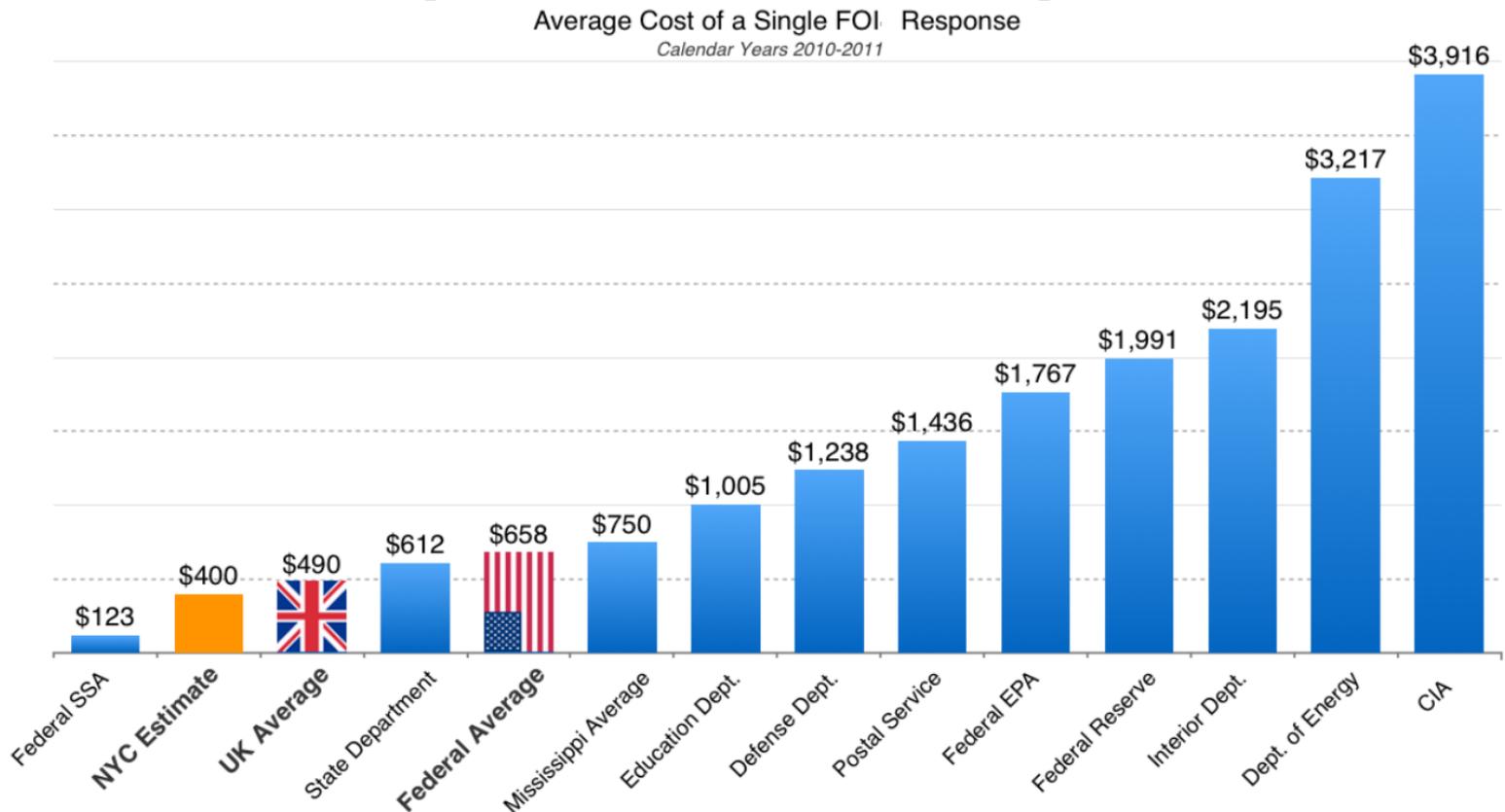


Exemptions

- ▶ 7. An individual's social security number and insurance or medical information and cell phone or personal email information in personnel records may be redacted from such records. See O.C.G.A. § 50-18-72 (a)(20).
- ▶ 8. Public disclosure is not required for a public employee's home address, home telephone number, social security number, and insurance or medical information. See O.C.G.A. § 50-18-72(a)(21). Employee protections apply to retirees. Exemptions do not apply to records that do not specifically identify public employees by their jobs, titles, or offices. See O.C.G.A. § 50-18-72(a)(21).
- ▶ 9. Public disclosure is not required for records acquired by a public agency related to carpooling and ridesharing. See O.C.G.A. § 50-18-72(a)(24).
- ▶ 10. Public disclosure is not required for records of security plans which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of public safety. See O.C.G.A. § 50-18-72 (a)(25).

FOI Requests are Expensive

Something to consider: If an agency gets a lot of requests for the same information, and they know it's public, why not put it online or make it more easily accessible. Save time and taxpayer \$.





Coming Up Fast: Open Data

In a digital age, data is a critical asset

- Open data is defined by an expectation that government's digital information will be:
 -
 - Online
 - Easy to Find
 - Downloadable
 - Machine-Readable
 - Timely
 - Reusable without restriction or cost
 - Can be weather data, tax assessments, traffic data, budget data, campaign contributions, etc.



Thank You!



GEORGIA FIRST AMENDMENT FOUNDATION

Our hotline # for open government questions:
404-525-3646 or email us at **info@gfaf.org**