



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Georgia's Sunshine Laws and Nonprofit Organizations

Is your organization required to allow public access to its records and meetings? Under Georgia law, government agencies and even some nonprofits are required to make certain public disclosures. The Open Records Act and the Open Meetings Act, also known as the Georgia Sunshine Laws, provide broad public access to certain records and meetings. These laws were recently overhauled by the legislature, increasing the penalties for violations and making it easier for citizens to bring lawsuits.

The Georgia Sunshine Laws apply to any nonprofit that receives more than one-third of its funds from a direct allocation of taxpayer dollars. There is an exemption for people or organizations providing medical services for which they receive reimbursements from the state, including affiliates of those health providers through which tax funds pass. The laws also apply to nonprofit organizations that carry out government functions. For example, the Piedmont Park Conservancy, a nonprofit organization, has been required to make public disclosures of its records because it carries out a government function (operating a public park).

Open Records Act

The Georgia Open Records Act (ORA) provides the public with access to governmental records and documents. An organization that is subject to the ORA should carefully maintain its records, as virtually any document it produces or receives could be subject to public disclosure. Records that are subject to public disclosure include all documents, papers, letters, maps, books, tapes, photographs, and computer-based or generated information. An organization is required to make such records available upon request, but it is not required to post its records on its website or in a public location.

Under the ORA, there are a few types of records that even a qualifying organization does not have to disclose. These include:

- Records compiled for law enforcement purposes if disclosure would reveal certain confidential information;
- Records regarding the appointment, employment, or dismissal of a public officer or employee;
- An individual's social security number, insurance, financial or medical information;
- Records containing information regarding public utility, cable, internet, or telephone accounts held by private customers;
- Any trade secrets or proprietary data;

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- Confidential attorney work product and the legal conclusions in records containing communications subject to attorney-client privilege;
- Records pertaining to rate-setting and the administration of liability insurance; and
- Documents maintained by the Department of Economic Development relating to a development project before that project is secured by a binding commitment.

Responding to Requests for Records

If an organization receives a request for records, it should first determine whether it is subject to the ORA.¹ If it is, then it should next determine whether the records are subject to disclosure under the ORA, or if they fall into one of the exceptions provided in the law. If the records are subject to disclosure, the organization must respond within three business days and either make arrangements for inspection and copying or provide a written description of the records and a timetable for making the records available. If the records are not subject to disclosure, the organization must notify the requestor, citing the specific applicable exemption, within three days of either receiving the request or retrieval of the requested records.

For records that are subject to disclosure, the organization only needs to provide reasonable access for inspection and copying to the requesting party. It is not required to comb through files, compile sets of documents, make copies, or summarize information for the requesting parties. When the records contain confidential information that is not required to be disclosed and should be redacted, organizations can provide redacted copies of the records rather than access. For electronic records, an organization must produce electronic copies or printouts, whichever the requester prefers. Agencies can impose search, retrieval, and redaction costs on the requestor, but they must use “the most economical means” to retrieve and identify documents. The charge for search, retrieval, and redaction should be no higher than the prorated hourly salary of the lowest paid full-time employee with the necessary training to perform the request, with no charge for the first fifteen minutes. Organizations can also impose reasonable costs for copies, up to 10 cents per page, or the actual cost for electronic records. This cost was reduced by the recent changes to the law from 25 cents per page. Where the retrieval of records will cost more than \$25, the organization can require that the requester agree in advance to pay the costs. If it will cost more than \$500, the agency can require that the requester prepay the retrieval costs. Organizations can provide access to records through a publicly accessible website, rather than providing separate printouts. Even if the records are publicly available on a website, however, organizations must still respond to requests for records.

¹ The Internal Revenue Service requires that all 501(c)(3) tax-exempt organizations make certain records available to the public upon request, including the organization’s Form 1023 application for tax-exempt status and annual information returns (Form 990, 990-EZ, or 990-N). This requirement is separate from ORA.

Penalties for Non-Compliance

Organizations that violate the provisions of the ORA can face fines of up to \$1000 for the first offense, either for knowingly or negligently violating the ORA. For repeat violations within one year, the penalty can go up to \$2500. These enforcement provisions at 50-18-73 and -74 only apply when requests for records are made in writing, not orally.²

Privacy is a concern when making these sorts of records public. Therefore, organizations should exclude personal information about individuals, as well as their contact information. However, there is some protection should an organization mistakenly disclose such information. Any organization or person who provides access to information in good faith reliance on the requirements of the ORA is not liable in any action on account of having provided access to such information. The revised ORA has a strong presumption that public records should be available, and says that the law should be construed broadly and the exceptions narrowly.

Open Meetings Act

The Open Meetings Act (OMA) requires government meetings to be open to the public. The purpose of this law is to eliminate closed-door government meetings and to reduce public distrust of government actions. Nonprofit organizations also need to be aware of the OMA, which applies to the same organizations as the ORA. For example, the Olympic Task Force Selection Committee, a nonprofit organization, was required to comply with the OMA because it carried out certain government functions of the Atlanta Housing Authority. The Sexual Assault Center of Northeast Georgia, a nonprofit organization, was required to comply with the OMA because it received government grants and because it carried out government functions by acting under the authority of a county police department.

If a particular organization is subject to the OMA, its regularly scheduled meetings must be open to the public. Meetings do not have to be conducted in person to be subject to the OMA. A meeting that occurs over the telephone or internet may also be required to be open to the public.

The broad definition of a meeting under the OMA means that most types of meetings will be required to provide public access, but the recent revisions to the ORA clarified this definition somewhat. A meeting is any gathering of a quorum of the members of a governing body or committee at which any *official business* is discussed. Meetings do not include the gathering of a quorum for inspections of facilities or property, training, meetings with legislative or executive branches without other action taken by the members, traveling, or other events where no official business is discussed or formulated.

² O.C.G.A. §50-16-71 (b)(3).

There are a few limited types of meetings that are not required to be open to the public under the OMA, including meetings, or portions of meetings, in which members discuss:

- the appointment, employment, disciplinary action, or dismissal of an officer or employee,
- matters within the attorney-client privilege as recognized by Georgia Law,
- adoptions, or
- mediation to facilitate the resolution of conflict.

Before the enactment of the revised sunshine laws, meetings concerning the acquisition of real estate could also be private. Under the new law *all* final votes must be public, including those regarding the acquisition of real estate.³ No votes in executive session can be binding until the relevant information is disclosed and the decisions are ratified by a vote in an open meeting.

If an organization determines that it is subject to the OMA, it must do the following in order to comply with the law:

- set the time, place, and dates of its regular meetings;
- post that information in a conspicuous place available to the public at the regular meeting site;
- make an agenda of all matters expected to be discussed available to the public prior to the meeting;
- post the agenda at the meeting site during the two-week period before the meeting;
- allow visual and sound recording during the meeting;
- make available to the public a summary of the subjects acted on and a list of members present at the meeting within two days after a meeting; and
- if a meeting must be canceled or postponed, inform the public at least twenty-four hours beforehand at the place of the regular meetings.

There is a new exception to the above requirements for “emergency meetings” in the interest of public safety or the preservation of property or public services. Emergency meetings can be conducted by teleconference, as long as notice is given and the public is afforded simultaneous access. Individual members can also attend regular physical meetings by teleconference, but no more than twice per year absent emergency conditions or a written opinion from a health professional.

Penalties for Non-Compliance

If the requirements of the OMA are not met, then any action taken at a meeting is not binding. The OMA still requires that a party “knowingly or willfully” violated the statute in

³ Organizations can still have executive sessions to authorize negotiations to purchase, dispose of, or lease property, order appraisals, or enter into contracts or options to purchase, dispose of, or lease property subject to approval in public vote.

order to face criminal liability; but the recent revisions to the OMA added a rule that if a person or organization “negligently” violates the OMA, civil fines can be imposed of up to \$1000 for first violations and \$2500 for repeat violations within 12 months.

Minutes

Organizations subject to the Georgia Sunshine Laws must keep minutes of regular meetings and make them available to the public. These minutes should be promptly recorded and approved by the organization or committee, no later than immediately following the next regular meeting. Minutes should include the names of all members present, a description of each motion or proposal made, the identity of the people making and seconding each motion or proposal, and a record of all votes.

Organizations must also keep minutes of executive sessions, but these need not be open to the public. These minutes should describe each issue discussed and the fact that any attorney-client discussion occurred if it did.

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