



Open Records and Open Meetings

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Georgia's Open Meetings Act

Open Meetings Act – General Requirements

- Georgia's open meetings law applies to meetings of the governing authority of every "agency" including every county, municipal corporation, school district, or other political subdivision of the state and any committee of an agency.

O.C.G.A. § 50-14-1(a)(1).

Open Meetings Act – What is an “Agency”?

➤ The definition of “agency” includes:

.....

“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...”

O.C.G.A. §50-14-1(a)(1)(E)

Open Meetings Act – Nonprofit Organizations

The definition of “agency” excludes the following nonprofit organizations:

- hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or furnishing medical or health services to a citizen for they receive reimbursement from the state, whether directly or indirectly; or
- a sub-agency or affiliate of such a nonprofit organization through which the allocation of tax funds is made.

O.C.G.A. § 50-14-1(a)(1)(E).

Open Meetings Act – What is a Meeting?

- 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
- 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.

O.C.G.A. § 50-14-1(a)(3)(A)

- “Meeting” does NOT include:
 - ✓ inspections of physical facilities or property, state-
 - ✓ wide meetings or training, meetings with other agencies, travel, and social or
 - ✓ ceremonial events.

O.C.G.A. § 50-14-1(a)(3)(B). However, no official business is permitted at these gatherings.

Open Meetings Act – What type of public notice is required?

- Notice of the time, place, and date of any regular meeting must be given to the general public at least one week in advance. O.C.G.A. § 50-14-1(d)(1).
- The notice should be posted in a conspicuous place at the regular meeting place of the organization as well as on the organization's website.

Open Meetings Act – What type of public notice is required?

- Special meetings can be held with at least 24 hours' notice. O.C.G.A. § 50-14-1(d)(2). Unlike regular meetings, special meetings require immediate notification to the county's "legal organ."
- Under certain circumstances, a special meeting may be held without 24 hours' notice. O.C.G.A. § 50-14-1(d)(3). However, notice to the legal organ is required and must include the reason for holding the meeting with less than 24 hours' notice.

Open Meetings Act – Meeting Agenda

- An agenda of all matters expected to come before the organization 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. O.C.G.A. § 50-14-1 (e)(1).
- If an issue, however, is not included on the posted agenda it may still be considered if it is deemed necessary to address it.
- Agendas for meetings should be specific enough to advise the public of the matters expected to come before the board.

Open Meetings Act – Meeting Minutes

- Summary minutes, final minutes, and executive session minutes are required for every meeting, including committee meetings.

O.C.G.A. § 50-14-1(e)(2).

- Summary minutes must contain a list of the subjects acted on and those members present at the meeting and must be made available to the public for inspection within two business days of the adjournment of a meeting.

O.C.G.A. § 50-14-1(3)(2)(B).

- Final minutes must state what agency members were present, describe each motion, state who made and seconded a motion, and record all votes. If the vote is not unanimous, the votes of the participants must be recorded

Open Meetings Act – Meeting Minutes

- For emergency meetings (i.e., meetings with less than 24 hours' notice), the minutes must describe the notice given and the reason for the emergency.

O.C.G.A. § 50-14-1(d)(3).

- Meeting minutes must also show executive sessions. Executive session minutes are not released to the public. They are used in court if there is a dispute.

O.C.G.A. § 50-14-1(e)(2).

Open Meetings Act – Executive Session

- There are three primary reasons an organization's board would lawfully hold a closed meeting:
 - ✓ (1) to discuss pending or potential litigation with legal counsel;
 - ✓ (2) to discuss the acquisition of real estate by the organization; or
 - ✓ (3) specific personnel matters (i.e. to discuss hiring, compensation, evaluation, or disciplinary action for a specific public officer or employee).

O.C.G.A. § 50-14-3

Open Meeting Law – What is required for going into executive session?

- A properly advertised open meeting.
- A vote.
- The regular minutes must show the specific reason for closing the meeting, those present, and those voting for closing the meeting.
- Board chair must execute a sworn affidavit showing the basis for the executive session and that the closed part of the meeting was limited to the identified activity.

O.C.G.A. § 50-14-4(b)(1)

Open Meetings Act – Voting during executive session

- Any vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, is not binding 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.
- Voting on all personnel matters must be in an open meeting.

O.C.G.A. § 50-14-3(b)(1) & (2).

Open Meetings Act –

Can we hold meetings by Telephone/Teleconference?

- An agency without state-wide jurisdiction may conduct public meetings by teleconference only under “emergency conditions” or when a participant cannot attend in person because of health reasons or absence from the jurisdiction

O.C.G.A. § 50-14-1(g).

Open Meetings Act – What are the consequences of non-compliance?

- \$1,000 for first violation
- \$2,500 for subsequent violations (within 12 month period)
- Civil penalties permitted for negligent non-compliance with law
- Standard for a criminal violation is willfulness
- Violator may be found liable for attorney's fees
- Citizens may also bring civil actions in superior court in order to obtain compliance with the law.

Georgia's Open Records Act

What is the Open Records Act?

➤ O.C.G.A. § 50-18-70 *et seq.*

Law meant to "promote open government and encourage public access to public records in order to foster confidence in government."

Open Records Act

- Generally, public records of a state agency are open to inspection by any citizen. Public records are documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of operating a public agency.

O.C.G.A§50-18-70.

Open Records Act

- The definition of “agency” in the Open Records Act still includes certain nonprofit organizations.
O.C.G.A. §50-18-70(b)(1).

What is a “public” record?

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

What does the Open Records Act Require?

- Agencies must produce for inspection OR provide copies of all responsive records within three business days of receiving a request.
- If records are not available in three business days, agency must provide the requester with a description of all responsive records and a timeline for when the records will be available.

O.C.G.A. § 50-18-71(b)(1)(A).

Open Records Act – How should a request for records be made?

- Requests may be made orally or in writing (including email and fax).

O.C.G.A. § 50-18-71(b)(1)(B).

- However, in order for the enforcement provisions of the Act to be available to compel compliance and punish non-compliance, a request must be made in writing.

O.C.G.A. § 50-18-71(b)(3).

Open Records Act – Production of records

- The law permits agencies to impose a "reasonable charge" for the "search, retrieval, redaction, and production or copying costs" for the production of records.
- The charge cannot exceed the prorated hourly salary of the lowest paid full-time employee who has the necessary skill/training to perform the request.
- No charge may be imposed for the first quarter hour.
- Copying fee may be imposed at 10¢ per page.
- If cost is estimated to exceed \$500, pre-payment can be required.
- If cost is estimated to be between \$25 and \$500, search and retrieval can be deferred until the requester agrees to pay.
- If requester does not pay for records, prepayment can be required for future requests.

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

Open Records Act – Are personnel records subject to disclosure?

- Yes, but exempt material in the files may be redacted. The following personal information should be redacted from any records produced pursuant to the Open Records Act. O.C.G.A. § 50-18-72(a)(20).
 - ✓ Social security number
 - ✓ Mother's birth name
 - ✓ Credit card information
 - ✓ Debit card information
 - ✓ Bank account information
 - ✓ Account numbers
 - ✓ Utility account numbers
 - ✓ Password used to access accounts
 - ✓ Financial data or information
 - ✓ Insurance or medical information
 - ✓ Unlisted telephone number
 - ✓ Personal email address
 - ✓ Cellular telephone number
 - ✓ Day and month of birth
 - ✓ Information regarding public utility, television, internet, or telephone accounts

Open Records Act – Are certain records exempted from disclosure?

- Records protected by FERPA. O.C.G.A. § 50-18-72(a)(37).
- Attorney-client communications and attorney work product. O.C.G.A. § 50-18-72(a)(41) and (42).
- Medical records and/or documents containing information the release of which is an invasion of privacy. O.C.G.A. § 50-18-72 (a)(2).
- Confidential evaluations related to the appointment or hiring of a public officer or employee. O.C.G.A. § 50-18-72 (a)(7).
- Records with material obtained in investigations related to the suspension, firing or investigation of complaints against public officers or employees until ten days after the investigation has been presented for action or the investigation is otherwise concluded. O.C.G.A. § 50-18-72 (a)(8).
- Real estate appraisals, engineering or feasibility estimates, or other records relative to the acquisition of real property until the property has been acquired or the proposed transaction has been terminated/abandoned. O.C.G.A. § 50-18-72(a)(9).

Open Records Act – Are certain records exempted from disclosure?

- Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until the final award of the contract is made, the project is terminated or abandoned, or the agency takes a public vote regarding the bid/proposal (whichever comes first). O.C.G.A. § 50-18-72(a)(10).
- Records which identify persons under consideration for employment or appointment as executive head. Note: Documents concerning as many as three persons under consideration who have been determined to be best qualified for the position are subject to disclosure 14 calendar days before the meeting where the final action/vote is to be taken on the position of executive head. The candidate may decline being considered further rather than have the documents released. O.C.G.A. § 50-18-72(a)(11).
- Records containing trade secrets. O.C.G.A. § 50-18-72(a)(34).
- Records containing material subject to attorney-client privilege. O.C.G.A. § 50-18-72(a)(41).
- Confidential attorney work-product. O.C.G.A. § 50-18-72(a)(42).
- Documents containing confidential tax information. O.C.G.A. § 50-18-72(a)(43).
- Documents containing vital records not subject to disclosure. O.C.G.A. §§ 50-18-76.

NOTE: This list contains the most common exemptions and is not exhaustive. For a complete list, see O.C.G.A. § 50-18-72.

Open Records Act –

Are text and email messages subject to the Act?

- Yes. The Act applies to electronic data including emails and text messages. O.C.G.A. §§ 50-18-71(g) and (h).

Open Records Act – What if the requested document does not exist?

- The organization is not required to prepare any documents that are not in existence at the time of the request.

O.C.G.A. § 50-18-71(b)(1)(A).

- However, with respect to requests for electronic data, the organization may not deny the request on the grounds that exporting data or redaction of exempted information will require inputting search commands or instructions in a computer system if those commands can be executed using existing computer programs that the organization uses in the ordinary course of business to access, support, or otherwise manage the records or data.

O.C.G.A. § 50-18-71(f).

Open Records Act – Penalties for Violation

- Up to \$1,000 for first violation
- Up to \$2,500 for subsequent violations (within 12 month period)
- Civil penalties permitted for negligent non-compliance with law.
- Persons who destroy records for purpose of preventing their disclosure may be subject to felony prosecution.

O.C.G.A. § 50-18-74; O.C.G.A. § 50-18-73(b).

Questions?



For More Information:

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