Georgia Clerks Education Institute

Open Meetings & Open Records
September 10, 2018

Presenter: Ken Jarrard
County Attorney to Barrow County, Cherokee County, Forsyth County, Greene County, Jackson County & Newton County, and City Attorney to the City of Milton

Reason for the Act


Open Meetings
An Open Meeting is . . .

• O.C.G.A § 5-14-1 (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 (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.

An Open Meeting is . . .

• O.C.G.A § 5-14-1 (3)(A)

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A “Meeting” is NOT...

• O.C.G.A § 5-14-1 (3)(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, multi-jurisdictional, 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;
A “Meeting” is NOT...

- O.C.G.A § 5-14-1 (3)(B)

'Meeting' shall not include: (i) The gathering of a quorum of the members of a governing body or committee for making inspections of physical facilities or property under the jurisdiction of such agency at which no 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; (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.

A “Meeting” is NOT...Continued

- (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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**NOTE:** 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.

**Who Must Be Granted Access?**

- The Public - At All Times.

- Any radio or television station may broadcast an open meeting. The public body may reasonably control the placement and use of cameras so as not to unduly interfere with the meeting.

- Each governing body may adopt reasonable rules for attendance of the public at its meetings.

* [https://www.youtube.com/watch?v=2c33YHibS8](https://www.youtube.com/watch?v=2c33YHibS8)
Public Votes

“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.”

O.C.G.A. §50-14-1(b)(1).

Making the Public AWARE

Notice
• Regular meetings versus all other types of meetings

• For Regular meetings – the following is required:
  The agency 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. (O.C.G.A. § 50-14-1(b)(1))

PUBLIC NOTICE

The Forsyth County Board of Commissioners will hold a Work Session on Tuesday, August 12, 2014 at 2:00 p.m. in the Commissioners’ Large Conference Room, Suite 210 in the Forsyth County Administration Building located at 110 East Main Street, Cumming, Georgia 30040.

The purpose of the Work Session will be for discussion and consideration of the items as outlined on the attached agenda and such other business as may properly come before the Board.

Forsyth County is committed to providing all persons with equal access to its services, programs, activities, and benefits. If you require special assistance or accommodations in any form of communication or access to public meetings, you may contact the Title VI Coordinator at 770-781-2101 a minimum of 48 hours prior to the meeting date/time. The Title VI Coordinator is located at 110 East Main Street, Suite 235, Cumming, Georgia between the hours of 8:30 AM and 5 PM. Moreover, through FVPO, and/or telephone. Persons with hearing impairments may call the Georgia Relay Service at 253-0058 or (Voice) 1-800-222-7272 and asking to connect to 770-781-2101.

Forsyth County Board of Commissioners
August 8, 2014
Notice requirements for Regular versus Called meetings

- Regular meetings are subject to the following notice requirements:
  - Agency shall... “prescribe the time, place, and dates of regular meetings of the agency. This information shall be available... 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... as well as the agency’s website, if any.”
  - Special meeting (where legal organ publishes at least 4 times weekly):
    - Agency need only provide... “written or oral notice... at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff’s sales are published...”
    - Curious, that the notification requirements for a special meeting require no posting in a conspicuous location at the meeting site or on the website. A phone call to the legal organ is sufficient....

Making the Public AWARE

Notice

- Meetings OTHER than Regular meetings (with greater than 24 hour notice)
  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 a paper that has the equivalent circulation of the legal organ. If the legal organ publishes less than 4 times per week, then sufficient notice shall be posting of written notice at least 24 hours at the place of regular meeting and, upon written request from the media, notice by telephone, email, facsimile, or to the media at least 24 hours in advance. (O.C.G.A. § 50-14-1(d)(2))

Making the Public AWARE

Notice

- Meetings OTHER than Regular meetings with LESS THAN 24 hours advance notice
  - The touchstone here is “reasonable notice.”
  - Notice must be reasonable under the circumstances, to include
    (1) notice to the county legal organ or its equivalent,
    (2) recording in the minutes the need for such an emergency meeting,
    (3) providing telephonic, facsimile or email notification to other media outlets that have a place of business in the County and that have requested such notice. (O.C.G.A. § 50-14-1(d)(3))
**Agendas**

- Must be posted at *meeting site*, as far in advance of the meeting “as reasonably possible.”
- Must be made available to *public* prior to meeting.
- Should include all items expected to come before the agency.

*O.C.G.A. § 50-14-1(e)(1).*

**Agenda**

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<th>Item</th>
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<td>I</td>
<td>Call Meeting to Order</td>
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<td>II</td>
<td>Invocation and Pledge of Allegiance</td>
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<td>III</td>
<td>Adoption of Agenda</td>
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<td>IV</td>
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<td>V</td>
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<td>VII</td>
<td>Consent Agenda</td>
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**Note:** The agenda includes items for the board meeting, such as the agenda, minutes, and consent agenda items. The specific details of these items are not transcribed here.
(4) Approval of agreement with Street & Lane, LLC to construct and maintain sidewalks along the north and south sides of the new courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(5) Authorization to purchase a new computer system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(6) Authorization to purchase a new security system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(7) Authorization to purchase a new furniture system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(8) Authorization to purchase a new lighting system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(9) Authorization to purchase a new heating system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(10) Authorization to purchase a new ventilation system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(11) Authorization to purchase a new electrical system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(12) Authorization to purchase a new plumbing system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(13) Authorization to purchase a new technology system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(14) Authorization to purchase a new communication system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

(15) Authorization to purchase a new transportation system for the courthouse complex, as per the requirements of the courthouse complex construction project, as approved by the Board on May 17, 2016.

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Meeting Summaries

Must be written within 2 business days covering the actions taken and the members present and must be written and made available to the public.

Minutes

Must be promptly recorded and open to public inspection once approved as official, but no later than after the next regular meeting.

The minutes may be released earlier, however.

O.C.G.A § 50-14-1 (e)(2)(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.
O.C.G.A § 50-14-1 (e)(2)(B) Continued

- 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.

Recording Votes

The names of each person voting and how they voted shall be recorded.

It is presumed that the action was approved by each person in attendance unless the minutes reflect the name of the person voting against the proposal or abstaining.

Teleconference Meetings?

Local governments are given limited authority to hold meetings by teleconference.
Teleconference Meetings

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.

What is a “Work Session” or an “Executive Session”?

There are only two distinctions that matter: Whether the meetings are open or closed.

Executive session” means a portion of a meeting lawfully closed to the public.

O.C.G.A. §50-14-1(a)(2).
What Must Occur to “Close” a Meeting?

• A majority of the quorum must vote to close the meeting.
• The specific reasons shall be entered upon the official minutes.
• The minutes must show who was present and the names of those voting for closure.
• The chairperson shall execute an affidavit stating the subject matter.

Minutes of Executive Session  
O.C.G.A. 50-14-1(e)(2)(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 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.

Minutes of executive session are to be recorded. O.C.G.A. 50-14-1(e)(2)(C).

• Such minutes are not “open to the public.”
• Shall specify each issue discussed in executive session.
• With respect to Attorney/Client discussions, the fact that an attorney-client discussion occurred, and its subject, shall be identified in the minutes – but the substance of the discussion need not be recorded and shall not be identified in the minutes.
• Thus, for an Attorney Client discussion, an appropriate executive session minute entry would be the following:
  - Johnson v. Sinclair County - Litigation
  - The county attorney conducted an attorney client privileged discussion with the Board.
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.

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 shall be provided in this chapter. 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.
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.

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.

Incidental conversation unrelated to the business of the agency; or

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.
The Affidavit

The presiding officer must **sign an affidavit** stating that the matters discussed in a closed meeting were within the exceptions to the act, and **specify the relevant exception**.

Situations to Watch

- Seminars, Work Sessions and Retreats
- Pre-Meeting Meetings
- Breaks during Regular Meetings

Can an agency meet in “sub-quorums” on the same or similar subject matter without offending the act?

- While the act contains no express prohibition on having back to back sub-quorum meetings on the same subject matter, the Attorney General has consistently taken a clear position on this issue for over a decade:

  It is inappropriate for an agency governed by the Open Meetings Act to meet in groups of less than a quorum for the express purpose of avoiding their obligations under the Open Meetings Act.
April 15, 2013

VITA ZAMBROTTA, JR. 420 N. 15TH STREET
Ken E. Sanford, Sr.
1411 Piggott Village Drive
30014

OPEN MEETINGS ACT complaint from Tannen Swann regarding the
Peachtree County Board of Commissioners

Dear Mr. Sanford,

I am writing to you in your capacity as the attorney for the Peachtree County Board of Commissioners. As you know, there was a meeting on April 15, 2013, at 7:00 p.m., which was not open to the public as required by the Open Meetings Act. The County Commission meeting was closed due to the nature of the discussions, which were considered to be confidential.

The Open Meetings Act is designed to ensure that government meetings are transparent and that the public has the opportunity to attend and participate in decision-making processes. The act is intended to promote public participation in governmental affairs and to prevent the government from acting in secret.

I am a member of the County Commission, and I was unable to attend the meeting due to prior commitments. I am concerned that the meeting was not properly noticed and that the public was not informed of the decision to close the meeting.

Please provide me with a copy of the agenda for the closed meeting and any minutes or summary of the discussions that took place. I am also requesting copies of any documents that were distributed at the meeting.

I am also aware of the proposed changes to the Open Meetings Act, which would allow for more flexibility in closing meetings. However, I believe that the interests of the public and the need for transparency outweigh any potential benefits of such changes.

Thank you for your attention to this matter.

Sincerely,

[signature]

[Name, Title]

[Organization]

April 15, 2013

[Address]

[City, State, Zip]

[Phone Number]

[Email Address]

[Website]

[Other Contact Information]
• Attorney General may bring civil and criminal actions to enforce.
• Any person, firm, corporation, or other entity may bring an action.
• Superior Courts are authorized to issue injunctions.
• Attorney’s fees available to those bringing complaints.
Consequences for Violation?

- Knowingly and willfully participating in a meeting in violation of the Open Meetings Act is a misdemeanor, punishable by a fine up to $1000.
- Falsifying the affidavit concerning a closed meeting is a felony, punishable by five years in prison.

Additional Consequences

- Additional civil or criminal violations within a 12 month period can result in penalties up to $2,500.
- Good faith is a defense against criminal penalties.

Defenses to the Lawsuit

- Substantial Compliance
- Advice of Counsel
- Nonparticipation in the Violation
- Harmless or De Minimus Violation
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.

Does not matter how it is stored.
A Public Record is . . .

O.C.G.A. § 50-18-70(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.

Does not matter how it is stored.
“Private” Sector Documents?

Records received or maintained by a private person or entity on behalf of the city are subject to the same rules that apply to the city.

What is the appropriate format?

• A request may be made either orally or in writing, to include email, facsimile, or by any other method approved by the agency. Email and facsimile delivery are only appropriate if the agency uses email and facsimile communications in the ordinary course of business.
• However, an agency may (but is not required) to require that all written requests be made upon the agency’s choice of one of the following:
  • The agency’s director,
  • The agency’s chairperson,
  • The agency’s chief executive officer,
  • The agency’s senior official at any satellite office,
  • A clerk specifically designated as the custodian of agency records, or
  • A duly designated open records officer of an agency.
• NOTE: The lack of availability of any of the above persons may not delay an agency’s response.

How much detail in the request?

• Many times this is not an issue, as the request is sufficiently clear.
• If unclear, typically parties requesting records are very willing to provide further clarity.
• Where you see confusion is requests for electronic records. The new law provides:
  Requests for electronic messages (email, texts) should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought.
So Who Replies to the Request?

- If the agency has designated a records officer, then that person will respond.
- If not, then the custodian of the requested records, or perhaps the county attorney, should respond.
- Reviews each request, organizes the documents, and replies to ensure compliance with the law.

What If the Request is Sent to Someone other than the Records Custodian?

- If an agency designates a records officer, the three day response period does not begin to run until the written request is delivered to that officer. THIS MAKES SENSE. WHY?
- If an open records officer is designated, that the agency has an obligation to instruct a party requesting records of the name of that officer either orally or in writing.
- If a records officer is so designated, the agency shall also have an obligation to notify the legal organ of such designation and shall prominently display the records officer on the agency’s website.

How Much Do We Charge?

- Up to 10¢ per page for letter or legal size copies.
- The first 15 minutes of search time is free, after that, charge the hourly rate of the lowest paid full-time employee qualified to fill the request.
- The cost of the non-attorney cost it takes to redact exempted information from the records.
- Estimate the cost of retrieving the records!
- Can charge actual cost of producing copies that are not letter or legal sized.
- Can charge actual cost of media on which electronic records are produced.
How Much Do We Charge?

• Pre-retrieval estimate: If an agency estimates that the cost to produce responsive records will cost more than $25.00, the agency shall notify the requesting party within three (3) business days of this cost estimate, and the agency may defer its search until the requesting party has confirmed its willingness to pay the estimated cost.

Fees: What Happens if the Fee is Disputed?

• Custodian must justify the fee.

• May an agency impose fees that are high and discourage requestors?

How long does the Agency have to respond?

A reasonable amount of time to determine whether or not the records are subject to access and to permit inspection and copying. In no event shall this time exceed three (3) business days.
Lawful reasons to delay 3 day production of records (not responding, just production)

- Records do not exist;
- Agreement of the requesting party;
- Records are not subject to retrieval within 3 days;
- Preretrieval estimate provided – awaiting agreement to pay;
- Awaiting prepayment if estimate over $500.00;
- Requesting party has previous unpaid balance with agency, and therefore the law allows agency to demand prepayment;
- Delay awaiting court filing by company that believes information held by agency is trade secret information, so long as trade secret affidavit provided; and
- Court order in certain circumstances.

Caveat to the above options

- As mentioned previously, if an agency estimates that the cost to produce responsive records will cost more than $25.00, the agency shall notify the requesting party within three (3) business days of this cost estimate, and the agency may defer its search until the requesting party has confirmed its willingness to pay the estimated cost. – UNLESS –
  - If the requesting party has stated in their request that they agree on the front end to be responsible for an amount in excess of the estimated search and retrieval costs.
  - One FINAL caveat: If the agency estimates that the cost to search and assemble responsive documents will exceed $500.00, the agency may demand advance payment prior to beginning search, retrieval, review or production.

Special Rules - Computers

- Computer Programs: No right to access and inspect any computer program or computer software used or maintained in the course of operation of a public office or agency.
- Computer Records: Records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions.
- Computer Indexes: Any computerized index of deed records shall be printed every 30 days.
Requests Made By Litigants During Civil Or Administrative Litigation Where The Agency Is A Party

- Request must be made in writing
- Copied on counsel of record for the agency at the same time as it is delivered to the agency
- The agency shall serve a copy of its response on the requesting party and its attorney of record in the litigation (unless the attorney of record declines)

The long standing rule remains that an agency shall not be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

Records protected by the Attorney Client Privilege and Attorney Work Product doctrine as recognized by state law, except for:
- Factual findings of an agency attorney investigation, unrelated to pending litigation, settlement, claims, administrative proceedings or other judicial actions
- Legal conclusions of such an investigation remain privileged

Information withheld under Attorney Client Privilege may be challenged in a court proceeding and the withheld communications may be reviewed in camera by the court.

Certain protected tax information (business returns, etc.)
**Exceptions**

- Medical records.
- Documents required to be kept confidential by federal statute or regulation.

**Security Exception**

Records, the disclosure of which would compromise security against terrorism, limited to:
- Security and vulnerability assessments
- Plans for protection against terrorist attacks
- Documents related to security devices
- Other materials that could compromise security i.e. blueprints

**More Exceptions**

- Law enforcement records of confidential sources.
- Records of law enforcement related to criminal prosecution investigations.*

* Once the litigation concerning the investigation is completed, the records become open.
• Records of **confidential evaluations** in connection with the appointment or hiring of a public officer or employee.

• Records related to the **suspension, firing or investigation of complaints against a public employee** until ten days after presentation to the agency or an officer for action or termination of the investigation.

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• **Real estate records** related to the acquisition of property until the deal is abandoned or completed.

• Pending, rejected, or deferred **sealed bids** or **sealed proposals** and their detailed cost estimates until final award made, public vote on bid or proposal made or project is terminated.

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• Portions of records which would identify persons applying for employment as executive head of an agency **(14 days prior to the final determination, documents on up to the top 3 candidates must be available)**.
### Wait! More Exceptions

- Records contain information that would disclose or lead to the disclosure of any component in the process used to execute or adopt and electronic signature if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it.
- Information identifying participants in ridesharing programs.
- Identifying info on children age 12 and under in athletic or recreational program records.

### And Even More Exceptions

- Documents covered by attorney-client privilege or attorney work product.
- Tax records protected by state or federal law.
- Computer programs and software.
- Trade secrets identified as such by the person submitting them.

### Exceptions cont.

**Names, home addresses, telephone numbers, security codes, e-mail addresses, or other data collected by an agency in connection with a neighborhood watch or public safety notification program, or with the installation or servicing of fire or burglar alarms.**
State Law Requires Removal of the Following From “All Records”
O.C.G.A. § 50-18-72 (20)(a)

- Social Security number
- Mother’s birth name
- Personal e-mail address and cell phone #
- Unlisted telephone number if so designated in a public record
- Credit and Debit Card information
- Account numbers and passwords
- Utility account information (provided that nonitemized bills showing amounts owed/paid shall be available)
- Financial data or information
- Insurance or medical information
- Day and Month of birth- “if feasible”
- Bank account information

What’s different about Public Employees? O.C.G.A. § 50-18-72 (21)

- Employee’s home address
- Home telephone number
- Financial data or information other than compensation by a government agency
- 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, titles, or offices.

Who is a “Public Employee”?

- Any officer, employee or former employee of:
  - The State or its agencies
  - Any city or county or their Agencies or commissions
  - Other political subdivisions of this state
  - Teachers in public, charter and nonpublic schools
**Common Complaints**

- One common situation that occurs is when an agency denies access to a record but fails to state specifically to the person under what exception they are withholding the record and how it applies to the specific record withheld.

- The law requires the agencies, if they do withhold a record, they must do it under a specific statutory exemption. Sometimes the information on a specific record may be withheld pursuant to the statute.

**What Legal Remedies may be Available?**

- Injunctive Relief
- Mandamus
- Civil Penalties (Attorney Fees)
- Criminal Penalties
- Contempt of Court

**Who Can Be Sued?**

- The Public Entity
- Employees or public officials
- Records custodian or records officer
Important Caveat

The enforcement provisions in the Open Records Act 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 made orally.

Summary on Open Records

• Must allow requester to bring copier/scanner.
• Agency must utilize most economical means reasonably calculated to identify and produce responsive records.
• Cannot charge for attorney time to redact records.
• Not required to provide or create records that do not already exist but may have to run searches or filter data fields using existing software.

• Electronic records are to be provided in requested format if city uses that software or in ASCII or in format in which city keeps the records.
• County should designate one or more records officers. Must notify legal organ and display designation on city website (if there is one).
• If an agency uses e-mail or fax in the normal course of business, it must accept records requests by e-mail or fax.
**Suggested Rules of Thumb**

- Become familiar with the Act’s requirements.
  - If you have questions about the application of the Act to records in your possession or under your control, address those questions to your legal counsel.

- Assure that the Act’s requirements that public records be available for inspection and copying are satisfied.

- Assume that all government records are open to public inspection and copying, unless they fall within the definitions of the confidential records found in Exemptions of the Act or other sections of the law that provide confidentiality.

- When denying access to any government record specify what section of the Code provides confidentiality.

**Situations to Watch**

- Email
- Settlement Agreements
- Your Letters

**Questions?**
Georgia Clerks Education Institute

Presenter: Ken Jarrard
County Attorney to Barrow County, Cherokee County, Forsyth County, Greene County, Jackson County & Newton County, and City Attorney to the City of Milton

Open Meetings & Open Records

PROMOTING EXCELLENCE IN GOVERNMENT