

# OPEN GOVERNMENT GUIDE

Access to Public Records  
and Meetings in

GEORGIA

**REPORTERS  
COMMITTEE**  
FOR FREEDOM OF THE PRESS

Sixth Edition  
2011



# OPEN GOVERNMENT GUIDE

## OPEN RECORDS AND MEETINGS LAWS IN

# GEORGIA

*Prepared by:*  
Peter C. Canfield, Esq.  
Thomas M. Clyde, Esq.  
Dow, Lohnes PLLC  
Six Concourse Parkway  
Suite 1800  
Atlanta, Georgia 30328-6117  
(770) 901-8800



Sixth Edition  
2011

# OPEN GOVERNMENT GUIDE

Access to Public Records and Meetings in

## **GEORGIA**

**SIXTH EDITION  
2011**

Previously Titled  
Tapping Officials' Secrets

Published by The Reporters Committee for Freedom of the Press  
Lucy A. Dalglish, Executive Director

### **EDITORS**

Gregg Leslie, Legal Defense Director  
Mark Caramanica, Freedom of Information Director

### **ASSISTANT EDITORS**

Christine Beckett, Jack Nelson Legal Fellow  
Aaron Mackey  
Emily Peterson

Production of the sixth edition of this compendium was possible  
due to the generous financial contributions of:  
The Stanton Foundation

© 2011, 2006, 2001, 1997, 1993, 1989 by The Reporters Committee for Freedom of the Press.  
All rights reserved. No part of this publication may be reproduced in any form or  
by any means without the prior, written permission of the publisher.

ISBN: 1-58078-211-6

# Contents

Introductory Note .....	iv	C. Administrative appeal .....	13
User’s Guide .....	v	D. Court action .....	13
Foreword .....	1	E. Appealing initial court decisions.....	14
Open Records.....	1	F. Addressing government suits against disclosure.....	15
<b>I. STATUTE — BASIC APPLICATION .....</b>	<b>1</b>	<b>Open Meetings.....</b>	<b>15</b>
A. Who can request records? .....	1	<b>I. STATUTE — BASIC APPLICATION.....</b>	<b>15</b>
B. Whose records are and are not subject to the act? .....	2	A. Who may attend? .....	15
C. What records are and are not subject to the act? .....	3	B. What governments are subject to the law? .....	15
D. Fee provisions or practices .....	3	C. What bodies are covered by the law? .....	15
E. Who enforces the act? .....	4	D. What constitutes a meeting subject to the law.....	16
F. Are there sanctions for noncompliance? .....	4	E. Categories of meetings subject to the law .....	17
<b>II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..</b>	<b>4</b>	F. Recording/broadcast of meetings.....	19
A. Exemptions in the open records statute.....	5	G. Are there sanctions for noncompliance? .....	19
B. Other statutory exclusions .....	8	<b>II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS ..</b>	<b>20</b>
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.....	8	A. Exemptions in the open meetings statute.....	20
D. Are segregable portions of records containing exempt material available?.....	9	B. Any other statutory requirements for closed or open meetings. 20	
E. Homeland Security Measures.....	9	C. Court mandated opening, closing.....	20
<b>III. STATE LAW ON ELECTRONIC RECORDS.....</b>	<b>9</b>	<b>III. MEETING CATEGORIES — OPEN OR CLOSED. ....</b>	<b>20</b>
A. Can the requester choose a format for receiving records? ..	9	A. Adjudications by administrative bodies .....	20
B. Can the requester obtain a customized search of computer databases to fit particular needs? .....	9	B. Budget sessions .....	21
C. Does the existence of information in electronic format affect its openness? .....	9	C. Business and industry relations.....	21
D. How is e-mail treated? .....	9	D. Federal programs .....	21
E. How are text messages and instant messages treated? .....	9	E. Financial data of public bodies.....	21
F. How are social media postings and messages treated? .....	10	F. Financial data, trade secrets or proprietary data of private corporations and individuals .....	21
G. How are online discussion board posts treated? .....	10	G. Gifts, trusts and honorary degrees .....	21
H. Computer software .....	10	H. Grand jury testimony by public employees .....	21
I. How are fees for electronic records assessed? .....	10	I. Licensing examinations.....	21
J. Money-making schemes .....	10	J. Litigation; pending litigation or other attorney-client privileges .....	21
K. On-line dissemination.....	10	K. Negotiations and collective bargaining of public employees.....	21
<b>IV. RECORD CATEGORIES — OPEN OR CLOSED .....</b>	<b>10</b>	L. Parole board meetings, or meetings involving parole board decisions .....	21
A. Autopsy reports.....	10	M. Patients; discussions on individual patients .....	21
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations) .....	10	N. Personnel matters .....	21
C. Bank records .....	10	O. Real estate negotiations.....	21
D. Budgets .....	10	P. Security, national and/or state, of buildings, personnel or other .....	22
E. Business records, financial data, trade secrets .....	10	Q. Students; discussions on individual students .....	22
F. Contracts, proposals and bids.....	11	<b>IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS ..</b>	<b>22</b>
G. Collective bargaining records.....	11	A. When to challenge .....	22
H. Coroners reports.....	11	B. How to start.....	22
I. Economic development records.....	11	C. Court review of administrative decision.....	22
J. Election records .....	11	D. Appealing initial court decisions.....	23
K. Gun permits .....	11	<b>V. ASSERTING A RIGHT TO COMMENT .....</b>	<b>24</b>
L. Hospital reports.....	11	A. Is there a right to participate in public meetings? .....	24
M. Personnel records .....	11	B. Must a commenter give notice of intentions to comment? ..	24
N. Police records .....	11	C. Can a public body limit comment? .....	24
O. Prison, parole and probation reports .....	12	D. How can a participant assert rights to comment? .....	24
P. Public utility records.....	12	E. Are there sanctions for unapproved comment? .....	24
Q. Real estate appraisals, negotiations.....	12	<b>Appendix.....</b>	<b>24</b>
R. School and university records.....	12	<b>Statute.....</b>	<b>24</b>
S. Vital statistics.....	12		
<b>V. PROCEDURE FOR OBTAINING RECORDS .....</b>	<b>13</b>		
A. How to start.....	13		
B. How long to wait.....	13		

## Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

## User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

*Following the outline.* Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, [www.rcfp.org/ogg](http://www.rcfp.org/ogg). The Internet version of the outlines allows you to search the database and compare the law in different states.

*Updates:* The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at [www.rcfp.org/ogg](http://www.rcfp.org/ogg). This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.



**Prepared by:**

Peter C. Canfield, Esq.  
 Thomas M. Clyde, Esq.  
 Dow, Lohnes PLLC  
 Six Concourse Parkway  
 Suite 1800  
 Atlanta, Georgia 30328-6117  
 (770) 901-8800

**FOREWORD**

Over the past decade, as I see it, our court has breathed life into some old words that have lain dormant within our Constitution for most of their century-old existence. The words are:

Public officers are the trustees and servants of the people and are at all times amenable to them.

We have established that this is no empty phrase, but an obligation that is enforceable in a court of law. Public men and women, above all others, must act in good faith. Neither facile excuse nor clever dissimulation can serve in the stead of duty — faithfully performed. Because public men and women are amenable “at all times” to the people, they must conduct the public’s business out in the open.

Excerpt from the final opinion of Hon. Charles L. Weltner, Chief Justice, Georgia Supreme Court, attached to *Davis v. City of Macon*, 262 Ga. 407 (1992) (citations and footnotes omitted). Chief Justice Weltner was suffering from terminal cancer at the time he wrote the opinion, which began “[t]his is the last appeal in which I will participate as a member of the Supreme Court of Georgia.” He passed away shortly thereafter.

**Open Records****I. STATUTE — BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

The Georgia Open Records Act provides that public records shall be open for a personal inspection by “any citizen of this state.” O.C.G.A. § 50-18-70(b). A citizen is not precluded from exercising his rights under the Act merely because he is an employee of a nonresident corporation and the information received may be shared with his employer. *Atchison v. Hosp. Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980). See also 1993 Op. Att’y Gen. No. 93-27 (records should also be made available to nonresidents).

**2. Purpose of request.**

As a general rule, the reason for the request or the status of the person making the request is irrelevant. “[A] citizen of Georgia seeking an opportunity to copy and inspect a public record need not show any special or personal interest therein.” *Northside Realty Ass’n Inc. v. Community Relations Comm’n*, 240 Ga. 432, 434, 241 S.E.2d 189 (1978). There is “no reason to distinguish [a death row inmate’s] (or any other individual citizen’s) right of access from news organizations’ right of access.” *Parker v. Lee*, 259 Ga. 195, 199, 378 S.E.2d 677 (1989). Exceptions:

*a. Commercial solicitation.*

In 1993, the Georgia General Assembly repealed a former provision of the Act that permitted agencies to deny requests sought for commercial solicitation purposes. The Act as amended placed no explicit restrictions on the use of public records for commercial purposes. In 1999, however, the Assembly limited access to individual Uniform Motor Vehicle Accident reports to those parties named in the report or those that otherwise have a “need” for the report as defined by statute. See O.C.G.A. § 0-18-72 (a) (4.1).

*b. Administrative proceedings.*

A party to a proceeding governed by the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, may not employ the Open Records Act to access public records pertaining to the proceeding without the prior approval of the presiding administrative law judge. See O.C.G.A. § 50-18-70(e).

*c. Social security numbers and certain other personal identifying information.*

Citing identity theft concerns, the Georgia General Assembly has restricted access to social security numbers and certain other identifying information in certain otherwise public records absent a writing signed under oath stating that the person making the request is a representative of a news media organization and that the information requested is for use in connection with news gathering and reporting. O.C.G.A. § 50-18-72(a)(11.1). Further, unauthorized use or dissemination of information so obtained may be subject to criminal or civil penalties. *Ibid.*d. 911 caller information.

Information that would reveal the name, address or telephone number of a person placing a call to an emergency 911 system may be redacted except in certain circumstances where the request is made by the accused in a criminal case or by his or her attorney. O.C.G.A. § 50-18-72(a) (16).

*e. Photographs or video of deceased persons who are dismembered, decapitated, etc.*

Viewing of certain photographs or video of deceased persons who are dismembered, decapitated, etc. is now restricted by statute and rule to credentialed media pursuant to O.C.G.A. § 45-16-27(e).

### 3. Use of records.

Except in the rare case where access is statutorily conditioned upon written acceptance of restrictions on subsequent use, *see* discussion in 2 c above, Georgia law places no restrictions on the subsequent use of records obtained under the Act.

#### B. Whose records are and are not subject to the act?

##### 1. Executive branch.

All records “prepared and maintained or received in the course of the operation of a public office or agency” are subject to the Act. O.C.G.A. § 50-18-70(a). The definition of “public office or agency” is to be interpreted broadly in light of “the strong public policy of this state in favor of open government.” *Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 20, 311 S.E.2d 806 (1984). All offices, agencies or other entities that serve a “public function,” including all executive branch offices and agencies, are subject to the Act. *See Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994), *cert. denied sub nom. Laidlaw Transit Inc. v. CB Hackworth*, 1994 Ga. LEXIS 1142 (1994).

###### a. Public agency defined.

By definition, “public office or agency” expressly encompasses (a) every state department, agency, board, bureau, commission and authority; (b) every county, municipal corporation, school district, or other political subdivision of the state; (c) every department, agency, board, bureau, 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 law; and (e), with certain exceptions specified in the Act, any nonprofit organization that receives more than one third of its funds in the form of a direct allocation of tax funds from the governing authority of an agency. O.C.G.A. § 50-18-70(a) (incorporating by reference O.C.G.A. § 50-14-1(a)(1)).

###### b. Physical custody irrelevant.

In 1992, the Act was amended to expressly provide that public records “shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure. Provided, further, this Code section shall be construed to disallow an agency’s placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure.” O.C.G.A. § 50-18-70(a). *See Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994) (a public entity cannot avoid disclosures by delegating public functions, and the attendant documents, to private companies), *cert. denied sub nom. Laidlaw Transit Inc. v. CB Hackworth*, 1994 Ga. LEXIS 1142 (1994).

###### c. Confidentiality rules and agreements.

Public agencies cannot limit the coverage of the Act by administrative rule or agreement. *See, e.g., Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990) (accreditation reports submitted to state agency responsible for licensing private hospitals pursuant to an understanding that the reports would not be disclosed to the public are nevertheless public records and must be disclosed).

##### a. Records of the executives themselves.

Records of the executive of public offices and departments fall under the definition of public records. *See* O.C.G.A. § 50-18-70(a).

##### b. Records of certain but not all functions.

The Act provides for disclosure of “all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency.” O.C.G.A. § 50-18-70(a).

### 2. Legislative bodies.

The Act applies to all governmental bodies or other entities that serve a “public function,” legislative or otherwise. *See Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (applying related Open Meetings Act to Olympic Task Force Selection Committee) The Act specifically exempts from its disclosure requirements privileged and confidential official communications with the Office of Legislative Counsel, O.C.G.A. § 50-18-75, as well as certain records related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, O.C.G.A. § 50-18-72(a)(8). Moreover, the Act has been held inapplicable to the General Assembly, “since the Legislature [has] historically exercised the authority to adopt its own internal operating procedures, and [has] subsequently adopted [procedures] inconsistent with the Act.” *Fathers Are Parents Too v. Hunstein*, 202 Ga. App. 716, 717, 415 S.E.2d 322 (1992), *citing Coggin v. Davey*, 233 Ga. 407, 410-11, 211 S.E.2d 708 (1975).

### 3. Courts.

Records of judicial proceedings have not been held subject to the Act but are otherwise available to the public. *Green v. Drimmon Inc.*, 262 Ga. 264, 417 S.E.2d 11 (1992) (tape of court proceeding is public record pursuant to Uniform Court Rule 21); *Fathers Are Parents Too Inc. v. Hunstein*, 202 Ga. App. 716, 415 S.E.2d 322 (1992) (Act does not apply to the judicial branch of government); *see also Atlanta Journal and Constitution v. Long*, 258 Ga. 410, 369 S.E.2d 755 (1988) (civil case) (there is a “presumption that the public will have access to all court records,” which may be overridden only “in cases of clear necessity”); *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 292 S.E.2d 815 (1982) (criminal case). However, the Act provides a specific procedure for access to trial exhibits that conditions inspection of such exhibits on approval of the judge assigned to the case. In the event such inspection is not approved, a photograph, photocopy or other reproduction must be provided. O.C.G.A. § 50-18-71.1.

Records of settlement agreements involving government entities are subject to the Act. *City of Helen v. White County News*, No. 96-CV-409-DB (White County Super. Ct. 1996). Any provision which purports to make such an agreement confidential “is invalid and void as against the public policy of this State.” *Id.* Therefore, the agreement itself and “any other documents within the possession of the [government entity] or a private person or entity on behalf of the [government entity] that reflect the terms of the settlement are public records.” *Id.*

### 4. Nongovernmental bodies.

#### a. Bodies receiving public funds or benefits.

Any entity, business or organization that serves a public function, including any non-profit entity, is subject to the Act’s requirements. *See, e.g., Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 340, 461 S.E.2d 297 (1995) (nonprofit entities operating “as vehicles for public agencies” are subject to the Act regardless of the amount of funding they receive from the public); *see also Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994) (requiring private company that transported students under a contract with the city school system to reveal personnel records of school bus drivers); *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993) (holding records of the University of Georgia Student Organization Court subject to the Act); *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993) (designating records of private corporations associated with hospital authority as public records); *Cremins v. Atlanta Journal and Constitution*, 261 Ga. 496, 405 S.E.2d 675 (1991) (records reflecting the athletically related “outside” income of public university athletic coaches are public records even if the records are not on file with and have never been reviewed by university officials); *Dooley v. Davidson*, 260 Ga. 577, 397 S.E.2d 922 (1990) (same); *Macon Tele. Publishing Co. v. Board of Regents*, 256 Ga. 443 (1986) (records showing the assets, liabilities, income and expenses of the private

University of Georgia Athletic Association are public records). *But cf. Corp. of Mercer Univ. v. Barrett & Farabany, LLP*, 271 Ga. App. 501, 610 S.E.2d 138 (2005), *cert. denied* 2005 LEXIS 392 (Ga. 2005) (documents received and maintained by campus police force of a private university not subject to the Act, despite the fact that the university's police powers were delegated by the General Assembly).

Moreover, the Open Meetings Act, O.C.G.A. § 50-14-1, specifies that nonprofit organizations receiving at least a third of their funds from tax revenues are automatically subject to the Act. O.C.G.A. § 50-14-1(a)(1)(E). In 1999, the Assembly also amended the Act to reach records received or maintained by a private entity "in the performance of a service or function for or on behalf of" a government agency. O.C.G.A. § 50-18-70(a).

#### **b. Bodies whose members include governmental officials.**

Any entity, business or organization that serves a public function is subject to the Act's requirements. *See e.g., Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994) (requiring private company that transported students under a contract with the city school system to reveal personnel records of school bus drivers); *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993) (records of the University of Georgia Student Organization Court are subject to the Act); *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993) (designating records of private corporations associated with hospital authority as public records); *Cremins v. Atlanta Journal and Constitution*, 261 Ga. 496, 405 S.E.2d 675 (1991) (records reflecting the athletically related "outside" income of public university athletic coaches are public records even if the records are not on file with and have never been reviewed by university officials); *Dooley v. Davidson*, 260 Ga. 577, 397 S.E.2d 922 (1990) (same); *Macon Tele. Publishing Co. v. Board of Regents*, 256 Ga. 443 (1986) (records showing the assets, liabilities, income and expenses of the private University of Georgia Athletic Association are public records). Nonprofit entities that operate "as vehicles for public agencies" are subject to the Act regardless of the amount of funding they receive from the public. *Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 340, 461 S.E.2d 297 (1995). In 1999, the Assembly also amended the Act to reach records received or maintained by a private entity "in the performance of a service or function for or on behalf of" a government agency. O.C.G.A. § 50-18-70(a). A related statute, the Open Meetings Act, specifies that nonprofit organizations that receive at least a third of their funds from tax revenues are automatically subject to the Act. O.C.G.A. § 50-14-1(a)(1)(E).

#### **5. Multi-state or regional bodies.**

No express statutory provision covers these bodies and no cases have addressed the applicability of the Act to such bodies. However, pursuant to analogous case law, the Act would cover these bodies if Georgia's participation on any such body were "pursuant to the laws of this state" and served some public function. O.C.G.A. § 50-14-1(a)(1)(D), 50-18-70(a). *See, e.g., Cremins v. Atlanta Journal and Constitution*, 261 Ga. 496, 405 S.E.2d 675 (1991); *Cf. Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995).

#### **6. Advisory boards and commissions, quasi-governmental entities.**

Regardless of the name given to the entity, any entity that serves a public function is subject to the Act. O.C.G.A. § 50-18-70; *see also Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995); *Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994); *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993) (applying Act to student body performing task delegated by university administrators). *Atlanta Journal and Constitution v. Atlanta Convention and Visitors Bureau Inc.*, No. D63684 (Fulton County Super. Ct.), *aff'd mem.* (1989) (private convention bureau subject to Act because of public function and receipt of public funding). *See also* 1985 Op. Att'y Gen. No. U85-42 (Advisory

Committee on Area Planning and Development subject to Act).

#### **7. Others.**

The Act does not specifically exempt any other agencies or organizations that perform a public function.

#### **C. What records are and are not subject to the act?**

##### **1. What kind of records are covered?**

The Act includes within its definition of records "documents, papers, letters, maps, books, tapes, photographs, computer records or generated information, or similar material." O.C.G.A. § 50-18-70(a).

The Act specifically designates "computer records" as public records subject to the Act. O.C.G.A. § 50-18-70(a). If a county maintains a computerized index of county real estate deed records, the Act requires that the index be printed for purposes of public inspection no less than every 30 days. O.C.G.A. § 50-18-70(c). In addition, at the request of the party seeking the records, an agency is, where practicable, to make records maintained by computer available by electronic means, including the Internet. O.C.G.A. § 50-18-70(g). However, "computer programs" and "computer software" are not subject to the Act. O.C.G.A. § 50-18-72(f).

##### **2. What physical form of records are covered?**

The Act does not distinguish records on the basis of their physical form, but includes "all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material." O.C.G.A. § 50-18-70(a).

##### **3. Are certain records available for inspection but not copying?**

The Act does not specifically distinguish between the public's right to inspect and the right to copy records. *See, e.g.,* O.C.G.A. § 50-18-70(f). With respect to photographic duplication and other methods of reproduction, an interested member of the public shall have the right of access to any subject records for the purposes of making photographs or reproductions while they are in the custody of their lawful custodian. O.C.G.A. § 50-18-71(a).

#### **D. Fee provisions or practices.**

##### **1. Levels or limitations on fees.**

The Act permits an agency to charge a reasonable fee for copying costs not to exceed 25 cents per page unless a higher charge is specifically authorized by law. O.C.G.A. § 50-18-71(a), (b), (c). The Act also authorizes a charge for search and retrieval costs and other administrative costs. O.C.G.A. § 50-18-71(d). However, the agency must provide copies of the requested documents "in the most economical means available," O.C.G.A. § 50-18-71(c), and may not charge search or retrieval fees unless the request imposes "an unusual administrative cost or burden." *McFrugal Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992). In addition, an agency is required to give the requesting party an estimate of the copying, search, and other costs associated with fulfilling the request as a condition of recovering those costs. O.C.G.A. § 50-18-71.2.

*Disputes.* Where there is a dispute, the custodian bears the burden of demonstrating the reasonableness of any fee imposed. *McFrugal Rental v. Garr*, 262 Ga. 369, 370, 418 S.E.2d 60 (1992).

##### **2. Particular fee specifications or provisions.**

###### **a. Search.**

The Act provides that reasonable charges may be assessed "for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge

shall be made for the first quarter hour.” O.C.G.A. § 50-18-71(d). However, the Georgia Supreme Court has made clear that a fee may not be imposed when a citizen seeks only to inspect records that are routinely subject to public inspection, such as deeds, city ordinances or zoning maps. *McFrugal Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992) (“[A]ny fee imposed pursuant to O.C.G.A. § 50-18-71 constitutes a burden on the public’s right of access to public records. Therefore, the statute must be narrowly construed. As we construe the statute, the imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden”). See also *Trammell v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991) (agencies may not charge for attorney time spent reviewing records for exempt information).

#### b. Duplication.

The Act provides that, unless a higher charge is specifically authorized by law, custodians may charge and collect a uniform copying fee not to exceed 25 cents per page. O.C.G.A. § 50-18-71 (a), (b), (c). “An agency shall utilize the most economical means available for providing copies of public records.” O.C.G.A. § 50-18-71(e).

With respect to photographic duplication and other methods of reproduction, an interested member of the public shall have the right of access to any subject records for the purposes of making photographs or reproductions while they are in the custody of their lawful custodian. O.C.G.A. § 50-18-71(a).

#### c. Other.

*Computer records.* The Act provides that “[w]here information is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section.” O.C.G.A. § 50-18-71(f). At the request of the party seeking the records, an agency is, where practicable, to make records maintained by computer available by electronic means, including the Internet. O.C.G.A. § 50-18-70(g). No new fees other than those directly attributable to providing access can be charged where records are made available by electronic means. O.C.G.A. § 50-18-71.2.

A separate Code Section, however, allows clerks of the superior courts to sell “records or computer generated data of the office of the clerk” for profit. O.C.G.A. § 15-6-96. This provision “in no way limits public access to the information,” but instead only allows clerks of court to “contract to earn a profit by providing a computer disk or tape containing this already public information.” *Powell v. VonCanon*, 219 Ga. App. 840, 467 S.E.2d 193 (1996). O.C.G.A. § 15-6-96 thus permits clerks to obtain remuneration for providing data in easily accessible formats to companies who profit from re-selling this information.

#### 3. Provisions for fee waivers.

Georgia law does not prohibit waiver of search or copying fees.

#### 4. Requirements or prohibitions regarding advance payment.

Advance payment is not required under the Act. O.C.G.A. § 50-18-71. Once documents are requested, charges for all costs incurred by the governmental organization or agency can be collected from the citizen or organization in the same manner as taxes due. O.C.G.A. § 50-18-71(g). In order to collect, however, the agency must have first notified the party making the request of the estimated cost of the copying, search, retrieval, and other authorized fees. O.C.G.A. 50-18-71.2.

#### 5. Have agencies imposed prohibitive fees to discourage requesters?

In *Trammell v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991), a Georgia county government attempted to bill an individual citizen almost \$2,300 for copying fees and \$90 an hour for legal review of the

documents. The court held that the requester may not be required to pay for legal review and ordered that the copies be billed at the cost of what would have been the most economical method of copying. See also *McFrugal Rental v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992) (fees permitted only for copies of records or if request requires “action by the custodian that involves an unusual administrative cost or burden”).

#### E. Who enforces the act?

The superior courts of the state have jurisdiction to entertain actions for enforcement of the Act and to assess civil and criminal penalties for noncompliance. O.C.G.A. § 50-17-73(a), (b). These actions may be brought by any person or entity, or by the Attorney General, in his or her discretion. O.C.G.A. § 50-17-73(b).

##### 1. Attorney General’s role.

The Act provides that “the Attorney General shall have authority to bring . . . actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this article.” O.C.G.A. § 50-17-73(b).

##### 2. Availability of an ombudsman.

Although the Act does not specifically provide for an ombudsman, the Office of the Attorney General has established an informal mediation program whereby citizens requesting information may submit complaints and ensure that local governments fulfill their obligations under the Act.

##### 3. Commission or agency enforcement.

The Act does not assign enforcement or permit appeals to a specific agency or commission. Actions to enforce the provisions of the Act may be brought in superior court by “any person, firm, corporation, or other entity,” or by the Attorney General. O.C.G.A. § 50-18-73(a).

#### F. Are there sanctions for noncompliance?

The Act provides that “[a]ny person knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00.” O.C.G.A. § 50-18-74(a).

In any enforcement action, the court may also award the prevailing party reasonable attorney fees where it determines that either party acted “without substantial justification either in not complying with this chapter or in instituting the litigation.” See, e.g., *Everett v. Rast*, 272 Ga. App. 636, 612 S.E.2d 925 (2005) (declining to award costs due to petitioner’s failure to show that the city acted without substantial justification). In the event that attorney fees are granted, the court may reduce the award if it finds that “special circumstances” exist. See, e.g., *Evans v. Cty. Board of Comm’rs*, 255 Ga. App. 656, 566 S.E.2d 399 (2002), cert. denied 2002 Ga. LEXIS 801 (2002) (finding no special circumstances under the identical standard specified by the Open Meetings Act and affirming the award of fees, inclusive of those incurred in the course of appellate litigation).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

Exemptions are clearly the exception under Georgia’s statute. “The underlying implication” of the Act “is that all records of all state, county and municipal authorities are open to public inspection unless closed by a specific exception.” *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980), cert. denied, 446 U.S. 979 (1980). “[A]ny purported statutory exemption from disclosure under the Open Records Act must be narrowly construed.” *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992) (emphasis in original); *City of Brunswick v. Atlanta Journal and Constitution*, 214 Ga. App. 150, 447 S.E.2d 41 (1994). Moreover, if access to documents is denied, the custodian of records must, within three days, specify the specific legal authority exempting the record(s) from disclosure, by Code section, subsection, and paragraph.

O.C.G.A. § 50-18-72(h). See *Hoffman v. Oxendine*, 268 Ga. App. 316, 601 S.E.2d 813 (2004) (Insurance Commissioner failed to cite valid authority in his response). With limited circumstances for amending such response, the Act authorizes costs and reasonable attorney fees should the cited authority be irrelevant to the request. O.C.G.A. § 50-18-72(h).

### A. Exemptions in the open records statute.

As is the case with all exemptions to the Act, the custodian bears the burden of proving the exemption's applicability. *Brown v. Minter*, 243 Ga. 397, 254 S.E.2d 326 (1979). Conclusory and speculative allegations are insufficient. *Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 311 S.E.2d 806 (1984). Furthermore, the issue cannot be raised for the first time on appeal. *Dortch v. Atlanta Journal and Constitution*, 261 Ga. 350, 405 S.E.2d 43 (1991).

#### 1. Character of exemptions.

Although the Act lists several specific exempted categories, these exemptions are to be construed narrowly. O.C.G.A. § 50-18-72(g). See *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992) (“[A]ny purported statutory exemption from disclosure under the Open Records Act must be narrowly construed”); *City of Brunswick v. Atlanta Journal and Constitution*, 214 Ga. App. 150, 447 S.E.2d 41 (1994). Furthermore, the Act should be interpreted to “exclude from disclosure only that portion of a public record to which an exclusion is directly applicable.” O.C.G.A. § 50-18-72(g).

##### a. General or specific?

In order to claim an exemption under the Act, the public officer or agency having control of the records must respond to the request within three business days and specify in writing, by Code section, subsection, and paragraph, the specific legal authority exempting the records from disclosure. O.C.G.A. § 50-18-72(h). See *Hoffman v. Oxendine*, 268 Ga. App. 316, 601 S.E.2d 813 (2004) (Insurance Commissioner failed to cite valid authority in his response).

##### b. Mandatory or discretionary?

Generally, the Act does not require official custodians to deny access to the records falling under the enumerated exemptions. O.C.G.A. § 50-18-72(a). However, the Georgia Supreme Court has indicated that the statute mandates confidentiality in certain circumstances. *Harris v. Cox Enterprises Inc.*, 256 Ga. 299, 301, 348 S.E.2d 448 (1986) (“The language of the statute mandates the maintenance of confidentiality of records required by the federal government to be kept confidential or to medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy.”).

##### c. Patterned after federal Freedom of Information Act?

The Open Records Act was enacted on Feb. 27, 1959, several years before the passage of the Freedom of Information Act (“FOIA”). Moreover, the Georgia Supreme Court has held that the Open Records Act “materially differs” from the FOIA. *Bowers v. Shelton*, 265 Ga. 247, 248 453 S.E.2d 741 (1995) (state law provides a cause of action to enjoin compliance with the Act whereas the federal law does not).

#### 2. Discussion of each exemption.

##### a. Records specifically required by the federal government to be kept confidential.

Provision is made in O.C.G.A. § 50-18-72(a)(1) for compliance with federal government rules. Non-disclosure is permitted, however, only of federal records in the hands of state agencies that are required by federal law to be kept confidential. See *City of Atlanta v. Corey Entertainment Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004) (tax returns not exempt from disclosure where they relate to a “legitimate public inquiry” and do not involve an unauthorized invasion of privacy). There

is no requirement “that a report generated by or used by the state for state purposes be exempted from disclosure merely because that report would be kept confidential if generated or used by the federal government for federal purposes.” *Georgia Hosp. Ass'n v. Ledbetter*, 260 Ga. 477, 479, 396 S.E.2d 488 (1990). Additionally, agencies subject to the Act may not evade its disclosure requirements by contracting with a federal agency unless the contract provision prohibiting disclosure is mandated by federal law or regulation. 2005 Ga. Att’y Gen. LEXIS 2 (2005).

##### b. Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy.

Provision is made in O.C.G.A. § 50-18-72(a)(2) for the exclusion of private medical records from the Act. The invasion of personal privacy encompassed by this exemption is to be determined in accordance with the tort action of invasion of privacy. *Board of Regents v. Atlanta Journal and Constitution*, 259 Ga. 214, 378 S.E.2d 305 (1989). The right of privacy, which is protected under tort law, extends only to unnecessary public scrutiny. Therefore, the exemption “is not meant to exclude ‘legitimate inquiry into the operation of a government institution and those employed by it.’” *Dortch v. Atlanta Journal and Constitution*, 261 Ga. 350, 405 S.E.2d 43 (1991); see also *City of Atlanta v. Corey Entertainment Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004) (financial records submitted to obtain special business certification were legitimate objects of public scrutiny); *Fincher v. State*, 231 Ga. App. 49, 497 S.E.2d 632 (1998) (where requested report involved investigation into alleged improper conduct by employee of State Board of Pardons and Paroles, the public had a legitimate interest in the conduct that outweighed the employee’s interest in non-disclosure); but cf. *Cabaniss v. Hipsley*, 114 Ga. App. 367, 151 S.E.2d 496 (1966) (elements essential to recovery for invasion of personal privacy include: (a) the disclosure of private facts must be a public disclosure; (b) the facts disclosed to the public must be private, secluded or secret facts and not public ones; and (c) the matter made public must be offensive to a reasonable person of ordinary sensibilities under the circumstances).

Applying these principles, Georgia courts have consistently rejected attempts to prevent disclosure of records on privacy grounds. For example, in *Dortch*, the Georgia Supreme Court held that “[e]ven if we were to hold that publication of unlisted telephone numbers [contained in cellular telephone bills of city employees paid by the city] involved disclosure of secret or private facts, we cannot say . . . that such disclosure would be so offensive or objectionable to a reasonable man as to constitute the tort of invasion of privacy.” 261 Ga. at 352.

In *Board of Regents*, the Georgia Supreme Court, in holding that a public university’s presidential search records must be disclosed, noted that “it would make for a strange rule, indeed, to hold that a person who applies for a public position — to serve the public and to be paid by the public — has the right to keep secret from the public the very existence of such an application.” 259 Ga. at 217 n.6. See also *Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994); *City of St. Mary’s v. Camden Newspapers*, 20 Med. L. Rep. 1131 (Camden County Super. Ct.), *aff’d mem.* (Ga. 1991) (complaint filed by city employee alleging harassment by city council member must be publicly disclosed); *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980) (records containing names and addresses of public housing tenants delinquent on their rent are public records and must be disclosed); *Athens Observer v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980) (report commissioned by state university evaluating mathematical sciences program is public record and must be disclosed).

##### c. Law enforcement records.

###### (1) Confidential sources.

The Act exempts law enforcement records the disclosure of which would reveal the identity of a confidential source, endanger the life or physical safety of any person or persons or disclose the existence of a confidential surveillance or investigation. O.C.G.A. § 50-18-72(a)(3).

(2) *Records of pending investigations or prosecutions.*

The Act exempts records relating to any pending investigation or prosecution. O.C.G.A. § 50-18-72(a)(4). The statute, however, specifically provides that “initial police arrest reports and initial incident reports” are public records and must be disclosed. O.C.G.A. § 50-18-72(a)(4). These reports may be redacted, however, to exclude information that would reveal a confidential source, endanger the life of any person, or disclose the existence of a confidential investigation. *See Atlanta Journal and Constitution v. City of Brunswick*, 265 Ga. 413, 457 S.E.2d 176 (1995). Investigative records may be withheld from disclosure pursuant to the exemption only if the investigation is ongoing. *McBride v. Wetherington*, 199 Ga. App. 7, 403 S.E.2d 873 (1991). The Georgia Supreme Court has held that once the investigating agency has completed its report, the investigation is complete and the report must be publicly disclosed, even if the report is undergoing review by other authorities. *See Harris v. Cox Enter. Inc.*, 256 Ga. 299, 348 S.E.2d 448 (1986). The exemption itself states that “an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated.” O.C.G.A. § 50-18-72(a)(4). To justify non-disclosure under the pending-prosecution exemption, a law enforcement proceeding must be “an imminent adjudicatory proceeding of finite duration.” *Parker v. Lee*, 259 Ga. 195, 378 S.E.2d 677 (1989). *Habeas corpus* is not such a proceeding. *Napper v. Georgia Television Co.*, 257 Ga. 156, 365 S.E.2d 640 (1987) (affirming disclosure of Wayne Williams investigatory files). *See also Dye v. Wallace*, 274 Ga. 257, 553 S.E.2d 561 (2001) (Rape Confidentiality statute held unconstitutional and cannot therefore serve to exempt lawfully obtained information from disclosure); *Parker v. Lee*, 259 Ga. 195, 378 S.E.2d 677 (1989) (fact that death row inmate could yet be tried for alleged rape, for which an indictment against him is outstanding, does not justify non-release of records).

*d. Accident Reports.*

In 1999, the General Assembly limited access to individual Uniform Motor Vehicle Accident reports to those parties named in the report or those that otherwise have a “need” for the report as defined by statute. O.C.G.A. § 50-18-72(4.1). Among the parties with a “need” for accident reports are those “gathering information as a representative of a news media organization.” O.C.G.A. § 50-18-72(4.1)(I).

*e. Evaluations of public officers and employees.*

The Act permits non-disclosure of (1) confidential evaluations submitted to a governmental agency, prepared in connection with the appointment or hiring of a public officer or employee; (2) examinations prepared by a governmental agency in connection with the appointment or hiring of a public officer or employee; and (3) material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees but only until ten days after such material has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated. O.C.G.A. § 50-18-72(a)(5). *See also City of St. Mary's v. Camden Newspapers*, 20 Med. L. Rep. 1131 (Camden County Super. Ct.), *aff'd mem.* (Ga. 1991) (city employee’s written complaint alleging sexual harassment by city council member must be publicly disclosed under O.C.G.A. § 50-18-72(a)(5) after 10 days have passed); *Fincher v. State*, 231 Ga. App. 49, 497 S.E.2d 632 (1998) (investigation into alleged improper conduct by employee of State Board of Pardons and Paroles had to be released after ten days had passed).

*f. Real estate acquisition records.*

The Act permits non-disclosure of “[r]eal estate appraisals, engineering or feasibility estimates, or other records made for or by the state or local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned” as well as “engineers costs estimates and rejected or deferred bid proposals” in certain public

works projects undertaken pursuant to code sections listed in the statute.” *See* O.C.G.A. § 50-18-72(a)(6). Appraisals of property sought to be condemned are exempt from disclosure under the Act until litigation involving the condemnation has been completed. *Black v. Georgia Dep’t of Transp.*, 262 Ga. 342, 417 S.E.2d 655 (1992).

*g. Executive search records.*

The Act permits an agency to withhold those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of any agency subject to the Act or any unit of the state university system. O.C.G.A. § 50-18-72(a)(7). However, at least 14 calendar days prior to the meeting at which final action is to be taken on the position, the agency must release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. *Id.* Prior to the release of these documents, the agency may allow such a person to decline being considered further for the position rather than have documents pertaining to the person released but, in that event, the agency must release the documents of the next most qualified person under consideration who does not decline the position. *Id.* An agency that conducts its hiring or appointment process open to the public is not required to delay 14 days before taking final action on the position. *Id.* Upon request, a hiring agency must furnish the number of applicants and the composition of the list by such factors as race and sex. *Id.* Agencies are prohibited from avoiding these disclosure requirements by the employment of a private person or agency to assist with the search or application process. *Id.*

*b. General Assembly*

The Act exempts records related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office. O.C.G.A. § 50-18-72(a)(8). However, this specific exemption does not apply to records related to the provision of staff services to committees or subcommittees, or to any records previously disclosed pursuant to the direction of an individual member of the General Assembly. O.C.G.A. § 50-18-72(a)(8).

*i. Restricted records.*

Records that are of historical research value that are granted to academic libraries, public libraries, or public archives can be restricted in accordance with the donor’s request for a period of up to 75 years. O.C.G.A. § 50-18-72(a)(9). This exemption is inapplicable, however, to any records prepared in the course of the operation of state or local governments. O.C.G.A. § 50-18-72(a)(9).

*j. Records of the Department of Natural Resources.*

Disclosure of any entry in the Department of Natural Resources inventory and register of historic properties can be restricted if its release might create a substantial risk of harm, theft, or destruction of the property. O.C.G.A. § 50-18-72(a)(10). Likewise, disclosure of records containing site specific information regarding the occurrence or the location of the natural habits of rare species of plants and animals can be restricted if their release would create a substantial risk of harm, theft, or destruction to the species or habitats of the area. O.C.G.A. § 50-18-72(a)(11). However, owners of private property upon which rare species occur or upon which natural habitats are located are entitled to such information. O.C.G.A. § 50-18-72(a)(11).

Disclosure of records of farm water use by individual farms as determined by water-measuring devices installed pursuant to O.C.G.A. § 12-5-31 or § 12-5-105 can be restricted. O.C.G.A. § 50-18-72(a)(10.1). However, compilations of such records that do not reveal farm water use by individual farms are subject to disclosure. O.C.G.A. § 50-18-72(a)(10.1).

*k. Certain records related to personal privacy.*

In recent years, the Act has been repeatedly amended in response to concerns related to identity theft.

(1) *An individual's Social Security number, debit card information, bank account information, financial data or information, and insurance or medical information.*

The Act exempts an individual's Social Security number, mother's birth name, debit and credit card information, bank account information, financial data or information, and insurance or medical information in all records. O.C.G.A. § 50-18-72(a)(11.3)(A). The day and month of birth may be redacted if technically feasible at a reasonable cost. *Id.* The Act also exempts records related to the installation, operation, and sale or lease of electronic security systems. *Id.* This exemption is inapplicable to requests by the individual in respect of whom such information is maintained, by a consumer reporting agency, or by an authorized regulatory, legal, or law enforcement agency. O.C.G.A. § 50-18-72(a)(11.3)(B).

Representatives of the news media can obtain access to an individual's Social Security number and day and month of birth if the media representative submits a writing under oath confirming that he or she is seeking such information for use in connection with news gathering and reporting. *Id.* If such information is obtained in this way, however, disclosure of the information constitutes a misdemeanor and permits a person "injured" by the disclosure to pursue an invasion of privacy claim. O.C.G.A. § 50-18-72(a)(11.3)(C).

(2) *Records revealing electronic signatures.*

The Act exempts public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt electronic signatures, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. O.C.G.A. § 50-18-72(a)(12).

(3) *The home address, home telephone number, or Social Security number or insurance or medical information of public employees.*

The Act exempts the home address, home telephone number, Social Security number or insurance or medical information of public employees. O.C.G.A. § 50-18-72(a)(13.1).

(4) *Records related to guardianships*

The Act exempts records kept by the probate court pertaining to guardianships and conservatorships except as provided in O.C.G.A. § 29-9-18. O.C.G.A. § 50-18-72(a)(13.2).

(5) *Records from carpooling or ridesharing.*

The Act exempts records acquired by an agency for the purpose of implementing or assisting in the implementation of a carpooling program to the extent those records would reveal the name, home address, employment address, home telephone number, employment telephone number or hours of employment of any individual or would otherwise identify any individual who is participating, or who has expressed an interest in participating in any such program. O.C.G.A. § 50-18-72(a)(14).

*l. Records related to homeland security.*

The Act exempts records, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the non-disclosure of which is necessary for the protection of life, safety, or public property. O.C.G.A. § 50-18-72(a)(15)(A). This exemption is specifically limited to security plans and vulnerability assessment for certain structures; plans for protection against terrorist or other attacks, the effectiveness of which depends in part on a lack of general public knowledge of the details; documents related to the existence, nature, location, or function of security devices; and any plan or other material which, if made public, could compromise security against

sabotage, criminal, or terroristic acts. O.C.G.A. § 50-18-72 (a)(15)(A)(i)-(iv).

In the event of a challenge to official nondisclosure of records under this exemption, the court may review the documents in question *in camera* and condition any disclosure upon such measures as the court finds necessary to protect against the endangerment of life, safety, or public property. O.C.G.A. § 50-18-72(a)(15)(B).

*m. Emergency system call records*

The Act permits access to public records of an emergency "911" system, except information that would reveal the name, address, or telephone number of a person placing a call to a public safety answering point if redaction of such information is necessary to protect the identity of a confidential source, to prevent disclosure of information that would endanger the life or safety of any persons, or to prevent disclosure of the existence of a confidential investigation. O.C.G.A. § 50-18-72(a)(16).

*n. Athletic records identifying children under 12 years of age*

The Act exempts otherwise public records of athletic or recreational programs that include information identifying children 12 years of age or younger by name, address, telephone number, or emergency contact, unless such information has been redacted. O.C.G.A. § 50-18-72(a)(17).

*o. Trade secrets and proprietary information.*

The Act is not applicable to "[a]ny trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency." O.C.G.A. § 50-18-72(b)(1). *See Theragenics Corp. v. Dept. of Natural Resources*, Case No. S00G1851, 2001 Ga. LEXIS 299 (Ga. Apr. 30, 2001) (finding that company's failure to designate certain documents confidential or proprietary when first produced to state Environmental Protection Division did not waive protection of the trade secret exemption but rather agency must make independent determination upon request for disclosure under Act).

(1) *Trade secrets of a privileged or confidential nature required by law to be submitted to a government agency.*

Under Georgia common law, the term "trade secret" is narrowly defined as "a plan, process, tool, machine, or compound, known only to its owner and those of its employees to whom it must be confided in order to apply it to the uses intended." *Salsbury Lab. Inc. v. Merieux Lab. Inc.*, 980 F.2d 706, 710 (11th Cir. 1990) (citing *Thomas v. Best Mfg. Co.*, 234 Ga. 787, 218 S.E.2d 68 (1975)). *See also Vendo Co. v. Long*, 213 Ga. 774, 102 S.E.2d 173 (1958) ("trade secret" does not denote the mere privacy with which an ordinary commercial business is carried on). In 1988, the Act was amended to exempt only "trade secrets." Previously, the Act also exempted "commercial or financial information." Ga. L. 1987, p. 377, § 1.

Georgia's Public Service Commission, which regulates public utilities and telecommunications companies in the state, has adopted internal procedures for disclosure of information filed with the Commission. Rule 515-3-1-11, General Rules. *See also BellSouth Telecommunications Inc. v. Georgia Public Serv. Comm.*, No. E-07376 (Fulton County Super. Ct.) (mandating procedures similar to those adopted as Rule 515-3-1-.11). Companies must designate which material should remain confidential as trade secrets and provide reasons why disclosure should not be allowed. Rule 515-3-1-.11(1)(a), (c). If a requester seeks disclosure under the Act, a hearing is held at which the company has "the burden of proving that the potential for economic harm to them outweighs the public benefit derived from allowing the party or intervenor access to such information." Rule 515-3-1-.11(3)(a). Even if the documents are released to the requester, however, the guidelines may restrict the information from being openly released to the public. Rule 515-3-1-.11(3)(b).

Unsupported assertions that information submitted to an agency are trade secrets are not sufficient to justify nondisclosure. *State Road and Tollway Authority v. Electronic Transaction Consultants Corporation*, 306 Ga. App. 487, 702 S.E.2d 486 (2010).

(2) *Data, records or information of a proprietary nature produced by state agencies in connection with commercial, scientific, technical or scholarly research.*

The Act exempts any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education in connection with research on medical, scientific or scholarly issues, except where such data records, or information have been publicly released, published, copy-righted, or patented. O.C.G.A. § 50-18-72(b)(2).

(3) *Educational records constituting a test that derives value from being unknown to the test taker.*

The Act exempts records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration, which is administered by the State Board of Education, the Office of Student Achievement, or a local school system. O.C.G.A. § 50-18-72(b)(3). However, the State Board of Education may establish procedures whereby a person may view, but not copy such tests, if viewing, in the judgment of the board, will not affect the result of the administration of the test. O.C.G.A. § 50-18-72(b)(3).

These limitations may not be interpreted to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics. O.C.G.A. § 50-18-72(b)(3).

*p. Hospital authorities.*

Unless otherwise exempted by law, hospital authority records are public records. O.C.G.A. § 50-18-72(c)(1). *See, e.g., Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 311 S.E.2d 806 (1984) (records identifying the names, salaries, and job titles of hospital authority employees are public records and must be disclosed); *Atchison v. Hosp. Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980) (business telephone records of hospital authority are public records and must be disclosed); *Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978) (records relating to hospital authority's ambulance service are, with the exception of patient medical records, public records and must be disclosed); *see also Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995) (private company that operates public hospital is "vehicle" of hospital authority and thus subject to Act).

State officers and employees have "a privilege to refuse to disclose the identity of any person who has furnished medical or similar information which has or will become incorporated into any medical or public health investigation, study, or report of the Department of Human Resources." O.C.G.A. § 50-18-72(c)(2). Additionally, O.C.G.A. § 31-7-75.2 provides that public and private hospital authorities are not required "to disclose or make public any potentially commercial valuable plan, proposal, or strategy that may be of competitive advantage in the operation of the authority or its medical facilities and which has not been made public." This exemption terminates, however, once the plan or proposal is "either approved or rejected by the hospital authority governing board." *Id.* In 2001, the Assembly also forbade the release to the public of any autopsy photographs or images without written permission of the family. O.C.G.A. § 45-16-27.

*q. Probate court records relating to licenses to carry or possess firearms.*

The Act exempts probate records related to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. O.C.G.A. § 50-18-72(d).

*r. Attorney-client communications and attorney work product.*

The Act preserves the attorney-client privilege "to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or 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 of employees." O.C.G.A. § 50-18-72(e)(1), (2). *See Stoddard v. Board of Tax Assessors*, 173 Ga. App. 467, 326 S.E.2d 827 (1985) (privilege preserved even when all contact between county and attorney dealt with public records and public matters). The Act also preserves the confidentiality of attorney work product. O.C.G.A. § 50-18-72(e)(2).

Attorney-client information may be obtained in proceedings to enforce the Act to prove justification or lack thereof in refusing disclosure of documents under the Act, but only after an *in camera* inspection by the judge to determine relevancy. O.C.G.A. § 50-18-72(e)(1).

*s. Computer programs and software.*

The Act exempts any computer program or computer software used or maintained in the course of operation of a public office or agency. O.C.G.A. § 50-18-72(f)(2).

*t. Certain vital records.*

Official copies of records of deaths, applications for marriages and marriage certificates, divorces, dissolutions of marriages, and annulments are required by a separate statute to be open to the public. O.C.G.A. § 31-10-25(f). Certain other vital records (*e.g.*, information in vital records indicating that a birth occurred out of wedlock) may not be disclosed except as provided by regulation. O.C.G.A. § 31-10-25(a)-(e). The Act exempts the opening of such records when "temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Human Resources." O.C.G.A. § 50-18-76.

## B. Other statutory exclusions.

The Act exempts records that "by law are prohibited . . . from being open to inspection by the general public" even if the prohibition is not contained in the Act itself. O.C.G.A. § 50-18-70(b). *See, e.g., Emory Univ. Hosp. v. Sweeney*, 220 Ga. App. 502, 469 S.E.2d 772 (1996) (Act does not require disclosure of medical peer review documents covered by O.C.G.A. § 31-7-143); *Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995) (Act does not require disclosure of tax information covered by O.C.G.A. § 48-7-60(a)); *Southeastern Legal Found. v. Ledbetter*, 260 Ga. 803, 400 S.E.2d 630 (1991) (Act does not require disclosure of confidential "clinical records" covered by mental health statutes); *Evans v. Belth*, 193 Ga. App. 757, 388 S.E.2d 914 (1989) (Act does not require disclosure of records acquired by the Insurance Commissioner from the National Association of Insurance Commissioners pursuant to statute); *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987) (Act does not require disclosure of information gained through wiretaps when statutes prohibit public disclosure). However, such exclusions may not apply where the otherwise exempt information has been incorporated into an investigatory case file or has been ordered disclosed by a court. *See Napper*, 257 Ga. at 156.

## C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Under the Act, agencies are not required to disclose records "which by order of a court of this state . . . are prohibited or specifically exempted from being open to inspection by the general public." O.C.G.A. § 50-18-70(b). Initially, this language was interpreted as affording courts broad discretion in particular cases to craft judicial exemptions to the Act by balancing the perceived public interest in non-disclosure against the public interest in disclosure. *See, e.g., Northside Realty Ass'n v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978); *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976). Since 1990, however, the Georgia Supreme Court has expressly and repeatedly held that such a balancing test may be employed only for

the purpose of determining whether disclosure of the records would result in a tortious invasion of privacy. Courts are simply not empowered to craft exemptions not contained in the Act. *See, e.g., Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992); *Georgia Hosp. Ass'n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990); *Board of Regents v. Atlanta Journal and Constitution*, 259 Ga. 214, 378 S.E.2d 305 (1989); *Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994) (privacy rights of private transportation company and school bus drivers did not outweigh the public interest in disclosure of personal records); *see also Dortch v. Atlanta Journal and Constitution*, 261 Ga. 350, 405 S.E.2d 43 (1991) (disclosure of employee cell phone records insufficiently offensive or objectionable to outweigh the public's interest in the operation of the government).

#### **D. Are segregable portions of records containing exempt material available?**

The Act expressly “directs a narrow construction of its exclusions, exempting ‘only that portion of a public record to which an exclusion is directly applicable.’” *Board of Regents v. Atlanta Journal and Constitution*, 259 Ga. 214, 215-16, 378 S.E.2d 305 (1989) (emphasis in original) (quoting what is now O.C.G.A. § 50-18-72(g)). *See also Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992) (same standard applies when non-disclosure is sought based on exemptions found outside the Act).

It is the agency's duty to disclose all non-exempt portions of a record, O.C.G.A. § 50-18-72(g), and the agency may not charge for attorney time spent in doing so. *Trammell v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991). If segregating a record's public and non-public portions is impossible, the entire record must be disclosed. *Dortch v. Atlanta Journal and Constitution*, 261 Ga. 350, 405 S.E.2d 43 (1991) (personal information that is intermingled with information maintained by a public agency is subject to disclosure under the Act).

#### **E. Homeland Security Measures.**

The Act exempts records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the non-disclosure of which is necessary for the protection of life, safety, or public property. O.C.G.A. § 50-18-72(a)(15)(A). This exemption is specifically limited to security plans and vulnerability assessment for certain structures; plans for protection against terrorist or other attacks, the effectiveness of which depends in part on a lack of general public knowledge of the details; documents related to the existence, nature, location, or function of security devices; and any plan or other material which, if made public, could compromise security against sabotage, criminal, or terroristic acts. O.C.G.A. § 50-18-72 (a)(15)(A) (i)-(iv).

In the event of a challenge to official nondisclosure of records under this exemption, the court may review the documents in question *in camera* and condition any disclosure upon such measures as the court finds necessary to protect against the endangerment of life, safety, or public property. O.C.G.A. § 50-18-72(a)(15)(B).

### **III. STATE LAW ON ELECTRONIC RECORDS**

The Act specifically requires “computer based or generated information” to be disclosed according to the same guidelines as more traditional documents. O.C.G.A. § 50-18-70(a). In addition, at the request of a party seeking records maintained by computer, an agency is, where practicable, to make those records available by electronic means, including the Internet. O.C.G.A. § 50-18-70(g).

#### **A. Can the requester choose a format for receiving records?**

The Act requires that at the request of the party seeking the records, an agency is, where practicable, to make records maintained by computer available by electronic means, including the Internet. O.C.G.A. § 50-18-70(g). Georgia officials have accommodated requests for specially formatted computer-based information.

#### **B. Can the requester obtain a customized search of computer databases to fit particular needs?**

Although not specifically mandated by the Act, government entities often comply with requests for customized searches of computer databases. The Georgia Supreme Court has held, however, that state agencies are not required to create new programs, to provide public access via personal computers, or otherwise to have a computer technician create a computer program to compile otherwise separate data sets according to criteria conceived by the citizen. *Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hosp. Auth.*, 272 Ga. 725, 535 S.E.2d 243 (2000) (hospital authority had no duty to search for and compile new document from its existing computerized records); *Jersawitz v. Hicks*, 264 Ga. 553, 448 S.E.2d 352 (1994) (Act applied to real estate database but country office was not required to provide modem access).

#### **C. Does the existence of information in electronic format affect its openness?**

Georgia's Act requires the disclosure of documents without regard to the format in which they are stored. O.C.G.A. § 50-18-70(a).

#### **D. How is e-mail treated?**

E-mail documents are not treated any differently than written correspondence. Because the Act by its terms applies to both “computer based or generated information” and to “letters,” e-mail correspondence is subject to the Act. O.C.G.A. § 50-18-70 (a).

##### **1. Does e-mail constitute a record?**

Yes, the Act expressly applies to “computer based or generated information.”

##### **2. Public matter on government e-mail or government hardware**

Public matter on government e-mail or government hardware is subject to the Act's disclosure requirements.

##### **3. Private matter on government e-mail or government hardware**

Private matter on government e-mail or government hardware is presumptively subject to the Act's disclosure requirements and may properly be withheld from disclosure only if the information at issue is otherwise exempted by the Act.

##### **4. Public matter on private e-mail**

Public matter on private e-mail is subject to the Act's disclosure requirements.

##### **5. Private matter on private e-mail**

Private matter on private e-mail is not subject to the Act's disclosure requirements unless prepared and maintained or received in the performance of a service or function for or on behalf of a public agency or office.

#### **E. How are text messages and instant messages treated?**

Text messages are not treated any differently than written correspondence. Because the Act by its terms applies to both “computer based or generated information” and to “letters,” text messages are subject to the Act. O.C.G.A. § 50-18-70 (a).

##### **1. Do text messages and/or instant messages constitute a record?**

Yes, the Act expressly applies to “computer based or generated information.”

##### **2. Public matter message on government hardware.**

A public matter message on government hardware is subject to the Act's disclosure requirements.

**3. Private matter message on government hardware.**

A private matter message on government hardware is subject to the Act’s disclosure requirements and may properly be withheld from disclosure only if the information at issue is otherwise exempted by the Act.

**4. Public matter message on private hardware.**

A public matter message on private hardware is subject to the Act’s disclosure requirements.

**5. Private matter message on private hardware.**

A private matter message on private hardware is not subject to the Act’s disclosure requirements unless prepared and maintained or received in the performance of a service or function for or on behalf of a public agency or office.

**F. How are social media postings and messages treated?**

Because the Act by its terms applies to “computer based or generated information” social media postings and messages are presumptively subject to the Act. O.C.G.A. § 50-18-70 (a).

**G. How are online discussion board posts treated?**

Because the Act by its terms applies to “computer based or generated information,” online discussion board posts are presumptively subject to the Act. O.C.G.A. § 50-18-70 (a).

**H. Computer software**

The Act is not applicable to any computer program or computer software used or maintained in the course of operation of a public office or agency. O.C.G.A. 50-18-72(f).

**1. Is software public?**

No, the Act is expressly not applicable to computer software.

**2. Is software and/or file metadata public?**

Because the Act by its terms applies to “computer based or generated information,” software metadata and file metadata are subject to the Act’s requirements. The Act provides that, upon request, records maintained by computer shall be made available where practicable by electronic means. O.C.G.A. 50-18-70(g).

**I. How are fees for electronic records assessed?**

An agency may not impose per-page charges for information requested that is maintained by computer, only a reasonable charge for search and retrieval and the agency’s actual cost of the computer disk or tape onto which the information is transferred. O.C.G.A. 50-18-71(f). In addition, upon request, records maintained by computer shall be made available where practicable by electronic means including Internet access. O.C.G.A. 50-18-70(g).

**J. Money-making schemes.**

Agencies are required by the Act to use the most economical means available for providing copies of public records. 50-18-71(e).

**1. Revenues.**

Absent express statutory authorization for imposing revenue-generating fees, agencies must use the most economical means available for providing copies of public records.

**2. Geographic Information Systems.**

Georgia law specifically authorizes agencies to make special revenue-generating arrangements with respect to Geographic Information Systems. O.C.G.A. 50-29-2.

**K. On-line dissemination.**

On request, agencies are required to make available where practica-

ble by electronic means, including Internet access, records maintained by computer. O.C.G.A. 50-18-70(g).

**IV. RECORD CATEGORIES — OPEN OR CLOSED**

Note that depending upon specific circumstances other provisions of the Georgia Code may be applicable and override the Act.

*Computer Records.* The Act requires computer records to be disclosed according to the same guidelines as more traditional documents. O.C.G.A. § 50-18-70(a).

*Juvenile Court Records.* The Georgia Supreme Court has held that an absolute statutory rule mandating the closure of juvenile proceedings and records is unconstitutional. *Florida Publishing Co. v. Morgan*, 253 Ga. 467, 322 S.E.2d 233 (1984). In such proceedings, the public and press “must be given an opportunity to show that the state’s or juveniles’ interest [in closure] is not ‘overriding’ or ‘compelling.’” *Id.* at 473. Additionally, the Georgia Juvenile Court Code requires access to proceedings and records where juveniles are accused of one on a long list of serious crimes or are repeat offenders. *See* O.C.G.A. § 15-11-78(b)(1) (permitting access to hearings pertaining to a “designated felony”); O.C.G.A. § 15-11-78(b)(2) (permitting access to hearings involving a child who has previously been adjudicated delinquent); O.C.G.A. § 15-11-82(b) (permitting access to law enforcement records where the juvenile is charged with a crime that must be adjudicated in an open proceeding).

**A. Autopsy reports.**

The Act does not exempt autopsy reports. *See Kilgore v. R. W. Page Corp.*, 259 Ga. 556, 385 S.E.2d 406 (1989) (Act applies to the office of coroner). However, O.C.G.A. § 45-16-27 specifically forbids the release of any autopsy photographs or images by hospitals without written permission of the next of kin. O.C.G.A. § 45-16-27(d).

**B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)**

Administrative enforcement records are subject to the Act’s disclosure requirements unless specifically unless specially exempted by statute.

**1. Rules for active investigations.**

Initial incident reports are subject to immediate disclosure. O.C.G.A. 50-18-72(a)(4). Pending investigation records are exempted from disclosure. *Ibid.*

**2. Rules for closed investigations.**

Records consisting of material obtained in investigations of complaints against public officers or employees are exempt from disclosure until ten days after being presented to the agency or an officer for action or the investigation is otherwise concluded or terminated. O.C.G.A. 50-18-72(a)(5). Investigative records are otherwise exempt from disclosure until all direct litigation regarding the investigation has become final or otherwise terminated. O.C.G.A. 50-18-72(a)(4).

**C. Bank records.**

Although the Act does not exempt bank records, it does require redaction of an individual’s “bank account information, financial data or information” prior to the disclosure of “any record.” O.C.G.A. § 50-18-72(a)(11.2).

**D. Budgets.**

Budgets are subject to the Act’s disclosure requirements.

**E. Business records, financial data, trade secrets.**

The Act does not exempt business records or financial data. “Trade secrets” are exempt from disclosure under the Act only if required by

law to be submitted to a government agency. O.C.G.A. § 50-18-72(b). Under Georgia common law, the term “trade secret” is narrowly defined as “a plan, process, tool, machine, or compound, known only to its owner and those of its employees to whom it must be confided in order to apply it to the uses intended.” *Salsbury Lab. Inc. v. Merieux Lab. Inc.*, 980 F.2d 706, 710 (11th Cir. 1990) (citing *Thomas v. Best Mfg. Co.*, 234 Ga. 787, 218 S.E.2d 68 (1975)). Cf. *Vendo Co. v. Long*, 213 Ga. 774, 102 S.E.2d 173 (1958) (trade secret does not denote the mere privacy with which an ordinary commercial business is carried on).

#### F. Contracts, proposals and bids.

The Act does not exempt contracts. However, where a state or local agency is involved in the acquisition of real property, “engineers’ cost estimates and pending, rejected or deferred bids or proposals” are exempt until the final award of the contract is made or the project is terminated. O.C.G.A. § 50-18-72(a)(6)(B).

#### G. Collective bargaining records.

The Act does not exempt collective bargaining records.

#### H. Coroners reports.

The Act does not exempt coroners’ reports and has been held to be applicable to the coroner’s office. *Kilgore v. R. W. Page Corp.*, 259 Ga. 556, 385 S.E.2d 406 (1989). However, O.C.G.A. § 45-16-27 specifically forbids the release of any autopsy photographs or images by hospitals without written permission of the next of kin. O.C.G.A. § 45-16-27(d).

#### I. Economic development records.

Economic development records have not been exempted from the Act’s disclosure requirements.

#### J. Election records.

The Act does not exempt election records. See *Rentz v. City of Moultrie*, 231 Ga. 579, 203 S.E.2d 216 (1974) (special election petition is public record).

##### 1. Voter registration records.

Voter registration lists are subject to the Act’s disclosure requirements but certain personal information is exempt from disclosure. O.C.G.A. 21-2-225.

##### 2. Voting results.

Voting results are subject to the Act’s disclosure requirements but particular types of election data may be exempt. See *Smith v. DeKalb County*, 288 Ga. App. 574, 654 S.E.2d 469 (2007) (affirming injunction prohibiting disclosure of election CDs).

#### K. Gun permits.

The Act is not applicable to gun permit information. O.C.G.A. 50-18-72(d).

#### L. Hospital reports.

The Act specifically provides that, unless otherwise exempted by law, hospital authority records are public records. O.C.G.A. § 50-18-72(c)(1). See, e.g., *Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995) (private company that operates public hospital is a “vehicle” of hospital authority and thus subject to Act); *Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 311 S.E.2d 806 (1984) (records identifying the names, salaries, and job titles of hospital authority employees are public records and must be disclosed); *Atchison v. Hosp. Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980) (business telephone records of hospital authority are public records and must be disclosed). Accreditation reports of private hospitals submitted to a state agency for licensing purposes are also public records. *Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990). However, under O.C.G.A. § 45-16-27 autopsy photographs or images may not be disclosed by hospitals without written permission

of the next of kin. O.C.G.A. § 45-16-27(d).

The Act affords state officers and employees “a privilege to refuse to disclose the identity of any person who has furnished medical or similar information which has or will become incorporated into any medical or public health investigation, study, or report of the Department of Human Resources.” O.C.G.A. § 50-18-72(c)(2). Under O.C.G.A. § 31-7-75.2 a hospital authority is not required “to disclose or make public any potentially commercial valuable plan, proposal, or strategy that may be of competitive advantage in the operation of the authority or its medical facilities and which has not been made public.” This exemption terminates, however, once the plan or proposal is “either approved or rejected by the hospital authority governing board.” *Id.*

#### M. Personnel records.

The Act does not exempt personnel records. See *Fincher v. State*, 231 Ga. App. 49, 497 S.E.2d 632 (1998) (there is no blanket exclusion exempting personnel records from disclosure); see also *Hackworth v. Board of Ed.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994). However, an individual’s Social Security number and insurance or medical information may be redacted from personnel records. O.C.G.A. § 50-18-72(a)(11.1).

##### 1. Salary.

Salary information is subject to the Act’s disclosure requirements.

##### 2. Disciplinary records.

Disciplinary records are subject to the Act’s disclosure requirements.

##### 3. Applications.

Applications for public employment are subject to the Act’s disclosure requirements.

##### 4. Personally identifying information.

Certain personal identifying information, e.g., home addresses and telephone numbers, of certain public employees, e.g., law enforcement officers and firefighters, is generally exempt from disclosure. See O.C.G.A. 50-18-72(a)(13)-(13.1).

##### 5. Expense reports.

Expense reports have not been exempted from the Act’s disclosure requirements.

##### 6. Other.

Public employee medical information is often exempt from the Act’s disclosure requirements.

#### N. Police records.

Police records are generally subject to the Act’s disclosure requirements.

##### 1. Accident reports.

Access to individual Uniform Motor Vehicle Accident reports is limited to those parties named in the report or those that otherwise have a “need” for the report as defined by statute. O.C.G.A. § 50-18-72(a)(4.1).

##### 2. Police blotter.

Initial police arrest reports and initial incident reports are subject to the Act’s disclosure requirements. O.C.G.A. 50-18-72(a)(4).

##### 3. 911 tapes.

911 tapes are akin to initial incident reports and subject to the Act’s disclosure requirements.

##### 4. Investigatory records.

Law enforcement investigative records are exempt from disclosure

until all direct litigation involving the investigation and any prosecution have become final or otherwise terminated. O.C.G.A. 50-18-72(a)(4).

**a. Rules for active investigations.**

Active investigative records are exempt from disclosure.

**b. Rules for closed investigations.**

Closed investigative records are exempt from disclosure.

**5. Arrest records.**

Initial police arrest reports are subject to the Act's disclosure requirements. O.C.G.A. 50-18-72(a)(4).

**6. Compilations of criminal histories.**

Georgia Crime Information Center (GCIC) or other state, federal, or international criminal history compilations is exempt from disclosure, except for any portion of a history containing Georgia felony convictions, which must be disclosed. When a criminal history record is in a closed investigatory case file, it is subject to the Act's disclosure requirements.

**7. Victims.**

Victim information is not exempt from the Act's disclosure requirement.

**8. Confessions.**

There is no special exemption for confessions.

**9. Confidential informants.**

Law enforcement has the discretion to withhold from disclosure records that would disclose the identity of a confidential source.

**10. Police techniques.**

Law enforcement has the discretion to withhold from disclosure records that would disclose the existence of confidential surveillance or investigation or confidential investigative or prosecution material that would endanger the life or physical safety of any person.

**11. Mug shots.**

Mug shots are subject to the Act's disclosure requirements.

**12. Sex offender records.**

Sex offender records are not exempt from disclosure. In fact, the Georgia Bureau of Investigation maintains an online sex offender registry.

**13. Emergency medical services records.**

With the exception of patient medical records, ambulance service records are subject to the Act's disclosure requirements. See *Griffin-Spalding County Hospital Authority v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978).

**O. Prison, parole and probation reports.**

The Georgia Department of Corrections and the Georgia Board of Pardons and Paroles each maintain searchable online databases providing certain offender and parolee information.

**P. Public utility records.**

Public utility records on file with the Georgia Public Service Commission are subject to the Act's disclosure requirements.

**Q. Real estate appraisals, negotiations.**

Records relating to real estate are subject to the Act's disclosure requirements. The Georgia Superior Court Clerks' Cooperative Authority maintains searchable online databases of such records.

**1. Appraisals.**

Real estate appraisals made for or by the state or a local agency relative to the acquisition of real property are exempt from disclosure until such time as the property has been acquired or the proposed transaction terminated or abandoned O.C.G.A. 50-18-72(a)(6)(A).

**2. Negotiations.**

All records relating to negotiations for the acquisition of real property are subject to the Act's disclosure requirements at least from the time the property has been acquired or the proposed transaction terminated or abandoned.

**3. Transactions.**

All records relating to negotiations for the acquisition of real property are subject to the Act's disclosure requirements at least from the time the property has been acquired or the proposed transaction terminated or abandoned.

**4. Deeds, liens, foreclosures, title history.**

Deeds, liens, etc. are subject to the Act's disclosure requirements. The Georgia Superior Court Clerks' Cooperative Authority maintains searchable online databases of such records.

**5. Zoning records.**

Zoning records are subject to the Act's disclosure requirements.

**R. School and university records.**

Public school and university records are subject to the Act's disclosure requirements.

**1. Athletic records.**

Public school athletic program records are subject to the Act's disclosure requirements.

**2. Trustee records.**

Records of the Board of Regents of the University System of Georgia are subject to the Act's disclosure requirements.

**3. Student records.**

Student records are subject to the Act's disclosure requirements except where federal law requires nondisclosure. See *Red & Black Publishing Co. v. Bd. of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993).

**4. Other.**

Public university foundation records are subject to the Act's disclosure requirements.

**S. Vital statistics.**

Information as to the availability of Georgia vital records is detailed by the Georgia Office of Vital Records on its website at <http://health.state.ga.us/programs/vitalrecords/>.

**1. Birth certificates.**

Access to Georgia birth certificates is limited to the person listed on the certificate and certain relatives. O.C.G.A. 31-10-25.

**2. Marriage & divorce.**

Marriage and divorce records are available to the general public. O.C.G.A. 31-10-25(f).

**3. Death certificates.**

Death certificates are available to the general public. O.C.G.A. 31-10-25(f).

**4. Infectious disease and health epidemics.**

Infectious disease and health epidemic case reports are not open to public inspection. O.C.G.A. 31-12-2(a).

## V. PROCEDURE FOR OBTAINING RECORDS

### A. How to start.

#### 1. Who receives a request?

The request can be made to any custodian of the records desired. It is often useful, however, to direct the request to the head of the agency having custody of the records.

#### 2. Does the law cover oral requests?

A written request is not required. See *Howard v. Sumter Free Press Inc.*, 272 Ga. 521, 531 S.E.2d 698 (2000) (fact that some of newspaper's requests for sheriff's records were oral did not diminish their effect and requests were sufficiently specific to identify them as requests for information subject to the Act). However, written requests are advised since they reduce the possibility of disputes regarding the nature or timing of the request.

##### a. Arrangements to inspect & copy.

The Act requires that public records be open for public inspection by any citizen of the state "at a reasonable time and place." O.C.G.A. § 50-18-70(b).

In all cases in which an interested member of the public seeks to make photographs or reproductions of any public records, this work may be done under the supervision of the lawful custodian thereof, who may adopt reasonable rules governing the work. O.C.G.A. § 50-18-71(a). Additionally, the work may be done in the room where the records are maintained by law. O.C.G.A. § 50-18-71(a).

##### b. If an oral request is denied:

#### (1). How does the requester memorialize the refusal?

Under O.C.G.A. § 50-18-72(h), a public officer or agency denying access to requested records "shall specify in writing the specific legal authority exempting such record or records from disclosure, by Code section, subsection, and paragraph." O.C.G.A. § 50-18-72(h). The public officer or agency must issue this written refusal within three business days of the request. O.C.G.A. § 50-18-72(h).

#### (2). Do subsequent steps need to be in writing?

The Act does not specifically address the proper method for memorializing subsequent steps in the request process. However, it is advisable to commit further correspondence to writing in order to avoid possible disputes regarding the nature or timing of the request.

### 3. Contents of a written request.

#### a. Description of the records.

A request for access to identifiable records is all that is necessary to trigger the custodian's obligation to respond.

#### b. Need to address fee issues.

The Act does not specifically require that the requesting party address fee issues in the request.

#### c. Plea for quick response.

The Act does not specifically require that the requesting party include a plea for a quick response in the request. Under the Act, the public official or agency receiving the request is required to respond within three business days. O.C.G.A. § 50-18-72(h).

#### d. Can the request be for future records?

The Act defines "public records" as "all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency." O.C.G.A.

§ 50-18-70(a). The Act does not address the possibility of requesting future records.

### B. How long to wait.

#### 1. Statutory, regulatory or court-set time limits for agency response.

The Act provides that "[t]he individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days." O.C.G.A. § 50-18-70(f).

If access to documents is denied, the custodian of records must, within three business days, specify the specific legal authority exempting the record(s) from disclosure, by Code section, subsection, and paragraph. O.C.G.A. § 50-18-72(h). The Act provides that "such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this article, whichever is sooner." O.C.G.A. § 50-18-72(h).

#### 2. Informal telephone inquiry as to status.

The Act does not address informal methods of following up on requests.

#### 3. Is delay recognized as a denial for appeal purposes?

The Act provides that a public officer or agency subject to a request for public records "shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying." O.C.G.A. § 50-18-70(f). However, "[i]n no event shall this time exceed three business days." O.C.G.A. § 50-18-70(f); *see also* O.C.G.A. § 50-18-72(h).

#### 4. Any other recourse to encourage a response.

Under O.C.G.A. § 50-18-73, the superior courts have jurisdiction to entertain actions to enforce compliance with the Act. Such actions may be brought by any entity or by the Attorney General. O.C.G.A. § 50-18-73(a). The Office of the Attorney General has established an informal mediation program whereby citizens requesting information may submit complaints and ensure that local governments fulfill their obligations under the Act.

### C. Administrative appeal.

The Act does not require or otherwise provide for administrative appeals.

#### 2. To whom is an appeal directed?

#### 4. Contents of appeal letter.

### D. Court action.

#### 1. Who may sue?

A suit to enforce compliance with the Act may be brought in superior court "by any person, firm, corporation, or other entity." O.C.G.A. § 50-18-73(a). In addition, the Attorney General may bring civil or criminal actions to enforce compliance with the Act. O.C.G.A. § 50-18-73(a).

#### 2. Priority.

The Act does not specifically require courts to give priority to litigation to enforce the Act but expedited treatment may be sought and is often afforded depending upon the facts of the particular case.

#### 3. Pro se.

A suit to enforce the Act may be brought *pro se* but legal assistance may be useful in presenting the issues and expediting their resolution.

See also O.C.G.A. § 50-18-73(b) (authorizing the award of attorney fees to the prevailing party under certain circumstances).

#### 4. Issues the court will address:

The Act affords courts the jurisdiction and authority “in law and in equity” to address any and all issues related to compliance with the Act. O.C.G.A. § 50-18-73(a).

##### a. Denial.

The courts regularly examine whether an agency’s denial of a request is improper.

##### b. Fees for records.

The courts are authorized to examine whether fee requests violate the Act.

##### c. Delays.

The courts are authorized to examine whether an agency’s delay violates the Act.

##### d. Patterns for future access (declaratory judgment).

Declaratory judgment is a remedy available in court actions over the Open Records Act as long as the dispute is ripe.

#### 5. Pleading format.

Suits to enforce the Act are typically initiated by filing with the court a verified complaint against the custodian of the records, specifying the request, the custodian’s response (or lack thereof), an explanation of the alleged violation of the Act and a description of the relief sought. Where the custodian has refused to allow access, the complaint typically seeks issuance of an injunction requiring the custodian to afford access now and in the future and is accompanied by a motion and supporting memorandum to the same effect. Where time is an issue, the motion should request entry of an immediate injunction and request that the court hear the matter on an emergency basis. Although *mandamus* to compel performance of official duties is available by statute in Georgia, the statutory *mandamus* procedures are such that proceeding by *mandamus* can be unnecessarily time consuming. O.C.G.A. § 9-6-20, *et seq.* See also *Tobin v. Cobb Cty. Board of Ed.*, 278 Ga 663, 604 S.E.2d 161 (2004) (*mandamus* will not lie where the Act provides an adequate legal remedy).

#### 6. Time limit for filing suit.

The statute does not set forth a specific limitations period for filing suit to enforce compliance. However, a court will not grant equitable relief to one whose long delay renders the ascertainment of truth difficult. O.C.G.A. § 23-1-25. Courts of equity may interpose an equitable bar, whenever from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights. O.C.G.A. § 9-3-3. See *Rentz v. City of Moultrie*, 231 Ga. 579, 203 S.E.2d 216 (1974) (persons who were improperly denied access to election petition prior to election but who waited until after the election to sue for access “will not be heard to complain”). On the other hand, a *mandamus* action based on the Act is premature where the party retains an adequate legal remedy, such as the right to seek records through discovery procedures. See *Tobin v. Cobb Cty. Board of Ed.*, 278 Ga 663, 604 S.E.2d 161 (2004); *Millar v. Fayette County Sheriff’s Dept.*, 241 Ga. App. 659, 527 S.E.2d 270 (1999).

#### 7. What court.

The superior courts, at least one of which is located in each of Georgia’s 159 counties, have jurisdiction to enforce compliance with the Act. O.C.G.A. § 50-18-73(a).

#### 8. Judicial remedies available.

The superior courts have jurisdiction in law and in equity to entertain actions to enforce compliance with the provisions of the statute.

O.C.G.A. § 50-18-73(a). In addition, any person knowingly and willfully violating the provisions of the Act by failing to provide access to non-exempt records may be subject to criminal penalties. *Id.* § 50-18-74.

#### 9. Litigation expenses.

The Act provides that if the violation or the action to enforce compliance was “without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds special circumstances exist, assess in favor of the complaining party reasonable attorney fees and other litigation costs reasonably incurred.” O.C.G.A. § 50-18-73(b). See, e.g., *Everett v. Rast*, 272 Ga. App. 636, 612 S.E.2d 925 (2005) (declining to award costs due to petitioner’s failure to show that the city acted without substantial justification). Cf. *Evans v. Cty. Board of Comm’rs*, 255 Ga. App. 656, 566 S.E.2d 399 (2002), *cert. denied* 2002 Ga. LEXIS 801 (2002) (finding no special circumstances under the identical standard specified by the Open Meetings Act and affirming the award of fees, inclusive of those incurred in the course of appellate litigation).

##### a. Attorney fees.

The Act expressly requires an award of attorney fees in appropriate cases. See, e.g., *City of Carrollton v. Information Age, Inc.*, 306 Ga.App. 891, 703 S.E.2d 431 (2010).

##### b. Court and litigation costs.

The Act expressly requires an award of court and litigation costs in appropriate cases.

#### 10. Fines.

Any person knowingly and willfully violating the provisions of the Act by failing to provide access to non-exempt records may be found guilty of a misdemeanor and fined up to \$100. O.C.G.A. § 50-18-74.

#### 11. Other penalties.

Elected officials may be subject to recall for violation of the Open Records Act. See *Steele v. Honea*, 261 Ga. 644, 409 S.E.2d 652 (1991) (determining that violation of Open Meetings Act is proper ground for recall).

#### 12. Settlement, pros and cons.

Not addressed.

#### E. Appealing initial court decisions.

##### 1. Appeal routes.

The Georgia Constitution provides that the Supreme Court shall have appellate jurisdiction of “[a]ll equity cases.” Ga. Const., Art. 6, § 6, 3(2). However, the Supreme Court has held that “[c]ases in which the grant or denial of [equitable] relief was merely ancillary to underlying issues of law, or would have been a matter of routine once the underlying issues of law were resolved, are not ‘equity cases.’” *Beachamp v. Knight*, 261 Ga. 608, 609, 409 S.E.2d 208 (1991), and that, even where equitable enforcement of the Act is sought, an appeal may properly be taken to the Court of Appeals if the appeal involves primarily an issue of law, such as the construction and application of the Act. See *id.* The Georgia Supreme Court has in recent years transferred to the Court of Appeal direct appeals taken from the denial of injunctive relief sought pursuant to the Act. See, e.g., *Doe v. Board of Regents*, 215 Ga. App. 684, 684 n.1, 452 S.E.2d 776 (1994); *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 151, 447 S.E.2d 41 (1994). *But cf. Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995) (Supreme Court exercised direct appellate jurisdiction where one issue on appeal involved authority of trial court to grant injunctive relief).

##### 2. Time limits for filing appeals.

A notice of appeal must be filed within 30 days after entry of final judgment. See O.C.G.A. § 5-6-38.

### 3. Contact of interested amici.

The Reporters Committee for Freedom of the Press files *amicus* briefs in important cases before the state's highest courts, as does the Georgia First Amendment Foundation, the Georgia Press Association, and various media entities in the state.

#### F. Addressing government suits against disclosure.

Public agencies are authorized to go to court within the three day response period seeking an order “based on an exception” to the Act permitting non-disclosure of the requested records. This is unusual and Georgia civil procedure would require notice to the requester.

## Open Meetings

### I. STATUTE — BASIC APPLICATION.

#### A. Who may attend?

Any member of the “public,” *i.e.*, any person, can attend meetings under the Open Meetings Act. O.C.G.A. § 50-14-1(b)-(c).

#### B. What governments are subject to the law?

The Act applies to all state and local “agencies,” which is defined to include (a) every state department, agency, board, bureau, commission, public corporation, and authority; (b) every county, municipal corporation, school district, or other political subdivision of the state; (c) every department, agency, board, bureau, 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 law; and (e), with certain exceptions specified in the Act, any nonprofit organization that receives more than one third of its funds in the form of a direct allocation of tax funds from the governing authority of an agency. O.C.G.A. § 50-14-1(a)(1).

The applicability of the Act is determined by a two-pronged test. *Crosland v. Butts County Bd. of Zoning Appeals*, 214 Ga. App. 295, 448 S.E.2d 454 (1994). First, the court determines whether the meeting is one of a governing body or an agency or any committee thereof. *Id.* at 455. Second, the court decides whether the meeting is one at which official business or policy of the agency is to be discussed or at which action will be taken. *Id.* If the answer to both questions is “yes,” then the meeting must be opened unless it falls into one of the narrow categories of exemptions. *Id.* See, *e.g.*, *Bryan Cty. Board of Equalization v. Bryan Cty. Board of Tax Assessors*, 253 Ga. App. 831, 560 S.E.2d 719 (2002) (county Board of Equalization is subject to Act under the two-prong test).

#### 1. State.

The Act applies to all entities of the state government. O.C.G.A. § 50-14-1(a)(1).

#### 2. County.

The Act applies to all entities of county government. O.C.G.A. § 50-14-1(a)(1).

#### 3. Local or municipal.

The Act applies to all entities of local and municipal government. O.C.G.A. § 50-14-1(a)(1).

### C. What bodies are covered by the law?

#### 1. Executive branch agencies.

The Act applies to the governing body or any committee of members created by the governing body of every state and local agency. O.C.G.A. § 50-14-1(a)(2).

#### 2. Legislative bodies.

The Act applies to all state and local “agencies” including all departments, agencies, boards, bureaus, commissions and authorities. O.C.G.A. § 50-14-1(a)(1). The Act also applies to any other entity serving a governmental purpose. See, *e.g.*, *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (Olympic Task Force Selection Committee subject to Act). The Act has been held not to apply to the Georgia General Assembly or its committees. See *Coggin v. Davey*, 233 Ga. 407, 211 S.E.2d 708 (1975). The Georgia Constitution, however, provides that legislative sessions shall be open to the public, although either house may create exceptions. Ga. Const., Art. 3, § 5, 11. Both the Senate and the House have adopted rules providing for “executive sessions” that are not open to the public. Senate Rule 219; House Rule 8.

### 3. Courts.

The Act has been held not to apply to judicial commission meetings. See *Fathers Are Parents Too Inc. v. Humstein*, 202 Ga. App. 716, 415 S.E.2d 322 (1992). Court proceedings, although they have not been held to be subject to the Act, are nevertheless required to be open to the public as a matter of state and federal constitutional law. See, e.g., *The Rockdale Citizen Pub. Co. v. State*, 266 Ga. 579, 468 S.E.2d 764 (1996) (closure of hearings requires clear and convincing proof that no other means are available to protect rights of criminal defendant); *R.W. Page Corp. v. Lumpkin*, 249 Ga. 576, 292 S.E.2d 815 (1982) (same); *Press-Enterprise v. Superior Court of California*, 478 U.S. 1 (1986) (preliminary hearing shall not be closed unless there is a substantial probability that fair trial right will be prejudiced by publicity). Cf. Uniform Superior Court Rule 22 (governing electronic and photographic news coverage of judicial proceedings).

### 4. Nongovernmental bodies receiving public funds or benefits.

With certain exceptions set forth in the Act, the Act applies to non-profit organizations that receive direct allocation of tax funds from the governing authority of any agency if those funds constitute more than one third of the organization's total funding. O.C.G.A. § 50-14-1(a)(1)(E). In addition, any entities which operate "as vehicles for public agencies," whether nonprofit or otherwise, are subject to the Act regardless of the amount of funding they receive from the public. *Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995).

### 5. Nongovernmental groups whose members include governmental officials.

Meetings of groups serving a governmental purpose are subject to the Act's requirements. See, e.g., *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (noting the presence of governmental decision-makers in applying the Act to Olympic Task Force Selection Committee).

### 6. Multi-state or regional bodies.

No express statutory provisions cover these bodies, and no cases have addressed the applicability of the Act to such bodies. However, pursuant to analogous case law, the Act would apply to such bodies if Georgia's participation on any such body were pursuant to the laws of this state and served some public function. O.C.G.A. 50-14-1(a)(1)(D). See, e.g., *Northwest Ga. Health Sys. v. Times-Journal*, 218 Ga. App. 336, 461 S.E.2d 297 (1995) (Act applies to non-profit corporation operating public hospitals); *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (Act applies to quasi-governmental Olympic Task Force Selection Committee).

### 7. Advisory boards and commissions, quasi-governmental entities.

The Act applies to meetings of state and local commissions. O.C.G.A. § 50-14-1(a)(1). The Act also applies to meetings at which committee recommendations on official business or policy are to be formulated or discussed. O.C.G.A. § 50-14-1(a)(2). Any entity which is "a vehicle" for an agency "to carry out its responsibilities" is included under the Act. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (applying Act to Olympic Task Force Selection Committee of the Atlanta Housing Authority). The Act has been broadly construed to apply to any group that performs any function of a government entity. See *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993) (student Organization Court); *Bryan Cty. Board of Equalization v. Bryan Cty. Board of Tax Assessors*, 253 Ga. App. 831, 560 S.E.2d 719 (2002) (county Board of Equalization); *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (Act applies to quasi-governmental Olympic Task Force Selection Committee).

### 8. Other bodies to which governmental or public functions are delegated.

The Georgia courts will open meetings of groups or organizations to which governmental functions have been delegated. In *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993), the Georgia Supreme Court opened the meetings of a student committee which had been delegated its disciplinary responsibilities by the University of Georgia. See also, *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (Act applies to any entity which is "a vehicle" for an agency to carry out its responsibilities.) But cf. *Corp. of Mercer Univ. v. Barrett & Farabany, LLP*, 271 Ga. App. 501, 610 S.E.2d 138 (2005) (documents received and maintained by campus police force of a private university not subject to disclosure under Open Records Act, despite the fact that the university's police powers were delegated by the General Assembly).

*Agencies with state-wide jurisdiction.* The Act applies to agencies with state-wide jurisdiction, including every department, agency, board, bureau, commission and authority of the state. O.C.G.A. § 50-14-1(a)(1)(A).

### 9. Appointed as well as elected bodies.

The Act makes no distinction between elected and appointed agencies. Both are covered.

#### D. What constitutes a meeting subject to the law.

*Statutory interpretation.* The Georgia Supreme Court has repeatedly held that the Act must be construed broadly and its exemptions narrowly. See *Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991) (the Act "must be broadly construed to effect its purpose of protecting the public and individuals from closed-door meetings"); *Atlanta Journal v. Hill*, 257 Ga. 398, 359 S.E.2d 913 (1987) (same); *Crosland v. Butts County Bd. of Zoning Appeals*, 214 Ga. App. 295, 448 S.E.2d 454 (1994) (Open Meetings Act will be interpreted to protect the public and individuals from closed-door meetings). Cf. *Steele v. Honea*, 261 Ga. 644, 647, 409 S.E.2d 652 (1991) (Fletcher, J., concurring) (because violation of the Act may be grounds for recall from office, "if there is the slightest doubt, or any question whatsoever, as to whether a matter can be the subject of a closed meeting, DO NOT CLOSE").

#### 1. Number that must be present.

The Act provides that whenever a quorum of agency members meets and any official action is taken or any public matter, official business or policy, is discussed or presented, the meeting must be open to the public. O.C.G.A. § 50-14-1(a)(2). An assembling of such a quorum to inspect physical facilities that are under the agency's jurisdiction or to meet with members of other agencies outside the geographical jurisdiction of the agency and at which no official action is taken does not constitute a meeting under the Act. *Id.*

##### a. Must a minimum number be present to constitute a "meeting"?

The Act defines "meeting" to include the "gathering of a quorum of the members of the governing body of an agency or any committee of its members created by such governing body." O.C.G.A. § 50-14-1(a)(2).

##### b. What effect does absence of a quorum have?

Under certain circumstances, in the absence of a quorum capable of conducting official business, the statutory definition of a "meeting" may not be satisfied. O.C.G.A. § 50-14-1(a)(2). See, e.g., *Claxton Enter. v. Evans Cty. Board of Comm'rs.*, 249 Ga. App. 870, 549 S.E. 2d 830 (2001) ("meeting" did not occur when county administrator contacted each member of the board by telephone over a period of time and at no particular place). However, committees or other informal gatherings for a public purpose are generally subject to the Act. *Jersawitz v.*

*Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (Act applies to quasi-governmental Olympic Task Force Selection Committee).

## 2. Nature of business subject to the law.

### a. “Information gathering” and “fact-finding” sessions.

If a quorum is present, then the meeting must be open. “Fact-finding” and purely deliberative sessions must comply with the Act. O.C.G.A. § 50-14-1(a)(2).

### b. Deliberations toward decisions.

Deliberative sessions are subject to the Act’s requirements just as those meetings where final decisions are made. O.C.G.A. § 50-14-1(a)(2).

## 3. Electronic meetings.

Although the Act does not specifically address electronic meetings, the Georgia Court of Appeals has indicated that a “meeting” may be conducted “by written, telephonic, electronic, wireless, or other virtual means.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 875 549 S.E. 2d 830 (2001). The Court added that “[a] designated place may be a postal, Internet, or telephonic address” and that “[a] designated time may be the date upon which requested responses are due.” *Id.* at 876.

### a. Conference calls and video/Internet conferencing.

The Act authorizes agencies with state-wide jurisdiction to conduct meetings by telephone conference call, but the meetings must comply with the requirements of the Act. O.C.G.A. § 50-14-1(f). *See, e.g.*, 1994 Op. Att’y Gen. No. 94-11 (State Properties Commission may hold meetings via conference call if conducted in compliance with the Act). *But cf. Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 549 S.E. 2d 830 (2001) (“meeting” did not occur when county administrator contacted each member of the Board by telephone over a period of time and at no particular place).

### b. E-mail.

No statute or reported case specifically addresses meetings held online. However, the Georgia Supreme Court has consistently held that the Act “must be broadly construed to effect its purpose of protecting the public and individuals for closed-door meetings.” *See, e.g., Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991). Additionally, the Georgia Court of Appeals has indicated that a “meeting” may be conducted “by written, telephonic, electronic, wireless, or other virtual means.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 875 549 S.E. 2d 830 (2001).

### c. Text messages.

No statute or reported case specifically addresses meetings held via text message. However, the Georgia Supreme Court has consistently held that the Act “must be broadly construed to effect its purpose of protecting the public and individuals for closed-door meetings.” *See, e.g., Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991). Additionally, the Georgia Court of Appeals has indicated that a “meeting” may be conducted “by written, telephonic, electronic, wireless, or other virtual means.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 875 549 S.E. 2d 830 (2001).

### d. Instant messaging.

No statute or reported case specifically addresses meetings held via instant messaging. However, the Georgia Supreme Court has consistently held that the Act “must be broadly construed to effect its purpose of protecting the public and individuals for closed-door meetings.” *See, e.g., Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991). Additionally, the Georgia Court of Appeals has indicated that a “meeting” may be conducted “by written, telephonic, electronic,

wireless, or other virtual means.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 875 549 S.E. 2d 830 (2001).

## e. Social media and online discussion boards.

No statute or reported case specifically addresses meetings held via social media or online discussion board. However, the Georgia Supreme Court has consistently held that the Act “must be broadly construed to effect its purpose of protecting the public and individuals for closed-door meetings.” *See, e.g., Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991). Additionally, the Georgia Court of Appeals has indicated that a “meeting” may be conducted “by written, telephonic, electronic, wireless, or other virtual means.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 875 549 S.E. 2d 830 (2001).

## E. Categories of meetings subject to the law.

### 1. Regular meetings.

The Act requires agencies to state the time, place and dates of its regular meetings. O.C.G.A. § 50-14-1(d).

#### a. Definition.

Regular meetings are those held in accordance with a regular schedule and at a regular meeting place. O.C.G.A. § 50-14-1(d).

#### b. Notice.

The Act requires every agency to make information regarding the time, place and dates of its regular meetings available to the general public by posting a notice containing the information in a conspicuous place at the agency’s regular meeting place. O.C.G.A. § 50-14-1(d). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (school board violated Act when it posted incorrect information in the wrong location).

Sometimes technical compliance with notice requirements is not enough. If notice is insufficient to reasonably apprise a concerned party then it violates due process. *Diamond Waste Inc. v. Monroe County*, 692 F.Supp. 812 (M.D. Ga. 1992). Furthermore, the notice of a meeting must not be misleading. Where a county zoning board posted the agenda for a meeting which listed “Adjourn Public Hearing” prior to “Decision & Vote,” there was “clearly a violation of the Open Meetings Act.” *Beck v. Crisp County Bd. of Appeals*, 221 Ga. App. 801, 472 S.E.2d 558 (1996). Although the audience was never expressly told to leave the meeting, “the intentional, misleading acts of the county effectively excluded” the public and, therefore, all actions taken by the board were invalid. *Id.* at 804.

The public agency subject to the Act is required to move the meeting to a larger space if the unusual meeting room is too small to accommodate the public, but it is not required to provide adequate seating to accommodate *all* members of the public. *Maxwell v. Carney*, 273 Ga. 864, 865, 548 S.E.2d 293 (2001) (“The Open Meetings Act requires adequate, advance notice of a meeting — not physical access to all members of the public.”).

#### (1). Time limit for giving notice.

Unless “special circumstances” are declared by the agency, any meeting not held in accordance with the regular schedule requires at least 24 hours notice. O.C.G.A. § 50-14-1(d). If special circumstances exist, the agency must provide reasonable notice of, and the reasons for the meeting, both of which must be reflected in the minutes of the meeting itself. O.C.G.A. § 50-14-1(d). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (Even if special circumstances justified the emergency meeting, the school board nevertheless failed to comply with the notice provisions of the Act.).

#### (2). To whom notice is given.

Notice must be posted conspicuously, but no particular persons or individuals must be given the notice. O.C.G.A. § 50-14-1(d).

**(3). Where posted.**

The posting should be placed in a conspicuous location at the agency's regular meeting place. O.C.G.A. § 50-14-1(d). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (where the school board had previously announced a change to the regular meeting location, it was responsible for posting a notice of a special meeting at this new location).

**(4). Public agenda items required.**

The Act requires every agency to make available to the public an agenda of all matters expected to come before the agency at the meeting. O.C.G.A. § 50-14-1(e)(1). The agenda must be available upon request and be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting. O.C.G.A. § 50-14-1(e)(1).

Failure to include items on the agenda which become necessary to address in the course of the meeting shall not preclude considering and acting upon such items. *See, e.g., Lancaster v. Effingham Cty.*, 2005 Ga. App. LEXIS 529 (2005) (county did not violate the Act when it discussed items absent from the public agenda).

**(5). Other information required in notice.**

Notice of regular meetings only requires a posting of the time, place, and dates on which the meeting will be held. Unlike special meetings, no notice of content is required. O.C.G.A. § 50-14-1(d).

**(6). Penalties and remedies for failure to give adequate notice.**

Anyone who "knowingly and willfully" conducts or participates in a meeting without complying with every part of the Act is guilty of a misdemeanor punishable by a \$500 fine. O.C.G.A. § 50-14-6. Failure to give adequate notice can result in the invalidation of the proceedings, the issuance of legal injunctions, and the requirement to pay the objecting party's legal costs. *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (attorney fees awarded to petitioners where school board failed to comply with notice provisions without substantial justification); *Beck v. Crisp County Bd. of Appeals*, 221 Ga. App. 801, 472 S.E.2d 558 (1996) (voiding board action after finding violation of Act because notice of meeting suggested voting would be closed).

**c. Minutes.**

A summary of the subjects acted on and those members present at a meeting must be written and made available to the public for inspection within two business days of the adjournment. The minutes of the meeting shall be promptly recorded and open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular agency meeting. O.C.G.A. § 50-14-1(e)(2).

**(1). Information required.**

The minutes must contain, at a minimum, the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. O.C.G.A. § 50-14-1(e)(2). In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded, and in all other cases it shall be assumed that the action taken was approved by each person present unless the minutes indicate otherwise. O.C.G.A. § 50-14-1(e)(2).

**(2). Are minutes public record?**

Minutes are public records. O.C.G.A. § 50-14-1(e)(2).

**2. Special or emergency meetings.****a. Definition.**

Meetings that are not held at the regularly posted time and place require more rigorous notice procedures. O.C.G.A. § 50-14-1(d).

**b. Notice requirements.**

The Act requires an agency to give "due notice" of any meeting to be held at a time or place other than at the time and place prescribed for regular meetings. O.C.G.A. § 50-14-1(d). Due notice still requires posting at least 24 hours in advance at the regular meeting place. O.C.G.A. § 50-14-1(d). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (school board failed to comply with notice provisions when it held special meeting). In addition, oral notification must be given to the newspaper that serves as the legal organ for the county. O.C.G.A. § 50-14-1(d). When "special circumstances" occur and are declared by the agency, notice must be "reasonable under the circumstances," including notice to the legal organ or a publication with circulation at least as high as that of the legal organ. O.C.G.A. § 50-14-1(d).

**(1). Time limit for giving notice.**

Unless "special circumstances" are declared by the agency, any meeting not held in accordance with the regular schedule requires at least 24 hours notice. O.C.G.A. § 50-14-1(d).

**(2). To whom notice is given.**

The legal organ for the county must be notified. O.C.G.A. § 50-14-1(d). In counties where the legal organ is published less than four times a week, due notice also requires that notice be given to any local media outlet making a written request to be so notified. O.C.G.A. § 50-14-1(d). They must be notified at least 24 hours in advance of the called meeting. O.C.G.A. § 50-14-1(d).

When a meeting must be held with less than 24 hours notice as a result of "special circumstances," either the county's legal organ or a newspaper having a circulation at least as high as that of the legal organ must be notified. O.C.G.A. § 50-14-1(d).

**(3). Where posted.**

The notice must be posted at the regular meeting place *and* given to certain defined publications. O.C.G.A. § 50-14-1(d). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (school board violated Act when it posted incorrect information in the wrong location).

**(4). Public agenda items required.**

The Act makes no distinction between regular and emergency meetings with regard to the agenda requirements. The Act requires every agency to make available to the public an agenda of all matters expected to come before the agency at the meeting. O.C.G.A. § 50-14-1(e)(1). The agenda must be available upon request and be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting. O.C.G.A. § 50-14-1(e)(1).

**(5). Other information required in notice.**

Notice of emergency meetings, those called with less than 24 hours notice, must include notice of the subjects to be considered at the meeting. O.C.G.A. § 50-14-1(e)(1).

**(6). Penalties and remedies for failure to give adequate notice.**

Anyone who "knowingly and willfully" conducts or participates in a meeting without complying with every part of the Act is guilty of a misdemeanor punishable by a \$500 fine. O.C.G.A. § 50-14-6. Failure to give adequate notice can result in the invalidation of the proceedings, the issuance of legal injunctions, and the requirement to pay the objecting party's legal costs. *See Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (attorney fees awarded to petitioners where school board failed to comply with notice provisions without substantial justification); *Beck v. Crisp County Bd. of Appeals*, 221 Ga. App. 801, 472 S.E.2d 558 (1996) (voiding board action after finding violation of Act because notice of meeting suggested voting would be closed).

### c. Minutes.

#### (1). Information required.

The Act makes no distinction between regular and emergency meetings with regard to the minutes required, except that in the case of a meeting held on less than 24 hours notice, the reason for holding the meeting on less than 24 hours notice and the nature of the notice must be recorded in the minutes. O.C.G.A. § 50-14-1(d).

#### (2). Are minutes a public record?

The minutes of special or emergency meetings are public records, as are those of regular meetings. O.C.G.A. § 50-14-1(e)(2).

### 3. Closed meetings or executive sessions.

#### a. Definition.

The Act does not *require* any meetings to be closed. It permits a meeting to be closed to the extent allowed by a specific exemption in the Act itself or elsewhere in the Georgia Code. O.C.G.A. § 50-14-4(a). A meeting may not be closed to the public except by a majority vote of those present. O.C.G.A. § 50-14-4(a).

When any meeting is closed to the public pursuant to an exception, the chairperson or presiding official must execute and file with the official minutes a notarized affidavit stating that the subject matter of the meeting was subject to exceptions provided by law and identifying the specific relevant exception. O.C.G.A. § 50-14-4(b).

Where a meeting of an agency is devoted in part to matters within exceptions provided by law, any portion of the meeting not subject to such exceptions shall be open to the public, with the minutes of such portions available to the public. O.C.G.A. § 50-14-4(a).

#### b. Notice requirements.

The Act's notice requirements do not distinguish between open and closed meetings. The Act explicitly provides that meetings during which an agency is discussing the future acquisition of real estate are subject to the Act's notice requirements. O.C.G.A. § 50-14-3(4).

#### (1). Time limit for giving notice.

Unless "special circumstances" are declared by the agency, any meeting not held in accordance with the regular schedule requires at least 24 hours notice. O.C.G.A. § 50-14-1(d).

#### (2). To whom notice is given.

Notice must be posted conspicuously, but no particular persons or individuals must be given the notice. O.C.G.A. § 50-14-1(d).

#### (3). Where posted.

The posting should be placed in a conspicuous location at the agency's regular meeting place. O.C.G.A. § 50-14-1(d).

#### (4). Public agenda items required.

The Act requires every agency to make available to the public an agenda of all matters expected to come before the agency at the meeting. O.C.G.A. § 50-14-1(e)(1). The agenda must be available upon request and be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting. O.C.G.A. § 50-14-1(e)(1).

#### (5). Other information required in notice.

Notice of regular meetings only requires a posting of the time, place, and dates on which the meeting will be held. Unlike special meetings, no notice of content is required. O.C.G.A. § 50-14-1(d).

#### (6). Penalties and remedies for failure to give adequate notice.

Anyone who "knowingly and willfully" conducts or participates in a meeting without complying with every part of the Act is guilty of a

misdemeanor punishable by a \$500 fine. O.C.G.A. § 50-14-6. Failure to give adequate notice can result in the invalidation of the proceedings, the issuance of legal injunctions, and the requirement to pay the objecting party's legal costs. *See Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (attorney fees awarded to petitioners where school board failed to comply with notice provisions without substantial justification); *Beck v. Crisp County Bd. of Appeals*, 221 Ga. App. 801, 472 S.E.2d 558 (1996) (voiding board action after finding violation of Act because notice of meeting suggested voting would be closed).

### c. Minutes.

#### (1). Information required.

O.C.G.A. § 50-14-4(a) requires that the specific reasons for closure of portions of a meeting be entered in the official minutes. The minutes must also reflect the names of the members present and the names of those voting for closure. O.C.G.A. § 50-14-1(e). *See, e.g., Moon v. Terrell Cty.*, 249 Ga. App. 567, 548 S.E.2d 680 (2001) (county commissioners violated Act when they failed to record the names of those present at the meeting, or to indicate how each commissioner voted). In addition, the minutes must contain a description of each motion or proposal made during the meeting. O.C.G.A. § 50-14-1(e).

#### (2). Are minutes a public record?

That part of the minutes reflecting the names of members present and the names of those voting for closure must be made available to the public. O.C.G.A. § 50-14-4(a). Furthermore, the minutes of any portion of the meeting not subject to an exception, privilege or confidentiality must be open to public inspection. O.C.G.A. § 50-14-4(a).

#### d. Requirement to meet in public before closing meeting.

A meeting cannot be closed to the public except by a majority vote of a quorum present for the meeting. O.C.G.A. § 50-14-4(a). *See also Moon v. Terrell Cty.*, 249 Ga. App. 567, 548 S.E.2d 680 (2001) (a single public employee cannot "waive" the requirements of the Act). That portion of the meeting prior to closure by majority vote must be open to the public. Misleading conduct by a committee that effectively excludes the public from a meeting will be construed as a violation of the Act. *See Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (posting notice in wrong location); *Beck v. Crisp County Zoning Board*, 221 Ga. App. 801 (1996) (notice indicated that voting would be closed).

#### e. Requirement to state statutory authority for closing meetings before closure.

When any portion of a meeting is closed, the chairperson or other person presiding must execute and file with the minutes a notarized affidavit stating under oath that the subject matter of the closed portion of the meeting was devoted to matters within the exceptions provided by law, identifying the specific relevant exception. O.C.G.A. § 50-14-4(b).

#### f. Tape recording requirements.

There are no tape recording requirements for closed meetings under the Act.

### F. Recording/broadcast of meetings.

The Act expressly permits visual, sound, and recordings of both the visual and sound content of open meetings. O.C.G.A. § 50-14-1(c).

#### 1. Sound recordings allowed.

Sound recordings are expressly permitted. O.C.G.A. § 50-14-1(c).

#### 2. Photographic recordings allowed.

Photographs are expressly permitted. O.C.G.A. § 50-14-1(c).

### G. Are there sanctions for noncompliance?

Anyone who "knowingly and willfully" conducts or participates in

a meeting without complying with every part of the Act is guilty of a misdemeanor punishable by a \$500 fine. O.C.G.A. § 50-14-6. Additionally, in any enforcement action in which the court determines that an agency acted without substantial justification in not complying with the Act, the court shall, unless it finds that special circumstances exist, award reasonable attorney fees and other litigation costs to the complaining party. O.C.G.A. § 50-14-5(b). *See, e.g., Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (attorney fees awarded where school board failed to comply with notice provisions of the Act); *Evans Cty. Board of Comm'rs. v. Claxton Enter.*, 255 Ga. App. 656, 566 S.E.2d 399 (2002) (costs incurred in both trial and appellate litigation awarded where county board improperly excluded public from meeting). *Cf. Moon v. Terrell Cty.*, 260 Ga. App. 433, 579 S.E.2d 845 (2003) (although county commissioners violated Act by closing their meeting, they acted with substantial justification insofar as they sought to protect the plaintiff's privacy rights and are therefore not liable for litigation costs).

## II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

### A. Exemptions in the open meetings statute.

The Georgia Supreme Court has consistently held that the Act's provisions must be construed broadly and its exceptions narrowly in order to effectuate its purpose of protecting the public from meetings held behind closed doors. *See Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991) (“[t]o effect the purposes of the Open Meetings Act, exemptions thereto must be construed narrowly”).

#### 1. Character of exemptions.

##### a. General or specific.

The Act contains nine specific exemptions. O.C.G.A. § 50-14-3. The Act also provides that it shall not be construed to repeal the attorney-client privilege or “tax matters which are otherwise made confidential by state law.” O.C.G.A. § 50-14-2(1)-(2).

##### b. Mandatory or discretionary closure.

The Act does not require closure of any meetings. It merely permits closure in certain circumstances, provided a majority of the quorum vote to do so. O.C.G.A. § 50-14-4(a). *See Steele v. Honea*, 261 Ga. 644, 647, 409 S.E.2d 652 (1991) (Fletcher, J., concurring) (because violation of the Act may be grounds for recall from office, “if there is the slightest doubt, or any question whatsoever, as to whether a matter can be the subject of a closed meeting, DO NOT CLOSE”).

#### 2. Description of each exemption.

##### a. Investigative meetings.

Staff meetings held for investigative purposes under duties or responsibilities imposed by law may be closed under the Act. O.C.G.A. § 50-14-3(1).

##### b. Board of Pardons and Paroles.

The deliberations and voting of the State Board of Pardons and Paroles are exempt from the Act. O.C.G.A. § 50-14-3(2). Additionally, the board may close meetings convened to receive information or evidence for or against clemency or in revocation proceedings, but only if the board determines that holding an open meeting would present a substantial risk of harm or injury to a witness. O.C.G.A. § 50-14-3(2).

##### c. Law enforcement.

Meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings, can be closed under the Act. O.C.G.A. § 50-14-3(3).

##### d. Real estate discussions.

An agency may close that portion of a meeting at which it discusses the future acquisition of real estate. O.C.G.A. § 50-14-3(4). Although still subject to the Act's notice and minutes requirements, those por-

tions of the minutes that identify real estate to be acquired do not have to be disclosed until the real estate acquisition has been completed, terminated, or abandoned or court proceedings initiated. O.C.G.A. § 50-14-3(4).

##### e. Hospital meetings.

Meetings of the governing authority or committee of a public hospital may be closed when discussing the granting, restriction or revocation of staff privileges or the granting of abortions under state or federal law. O.C.G.A. § 50-14-3(5).

##### f. Personnel decisions.

Meetings held to discuss or deliberate about the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee may be closed. O.C.G.A. § 50-14-3(6). However, those portions of such meetings during which evidence is received or argument heard about the discipline or dismissal of a public employee must be open to the public. O.C.G.A. § 50-14-3(6). *See, e.g., Moon v. Terrell Cty.*, 249 Ga. App. 567, 548 S.E.2d 680 (2001). In addition, the vote on any such matter must be taken in public and the minutes of the meeting made available. O.C.G.A. § 50-14-3(6). Also, meetings by an agency relating to the filling of a vacancy in the membership of the agency itself must be open to the public. O.C.G.A. § 50-14-3(6). *See Brennan v. Chatham County Comm'rs*, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

##### g. Adoptions.

Meetings regarding adoptions and related proceedings may be closed. O.C.G.A. § 50-14-3(7).

##### h. Public retirement system.

Meetings of the board of trustees or the investment committee of any public retirement system created under Title 46 may be closed when such board or committee is discussing matters pertaining to investment securities or portfolio positions and composition. O.C.G.A. § 50-14-3(8).

##### i. Public records.

There is no exemption to discuss whether government records are public or not. There is, however, an exemption to discuss records that are exempt from the Open Records Act under the homeland security exception. O.C.G.A. § 50-14-3(9).

### B. Any other statutory requirements for closed or open meetings.

The Act's open meeting requirements are subject to provisions elsewhere in the Georgia Code which may permit closure in certain circumstances. *E.g.*, O.C.G.A. § 20-2-757(a) (public school disciplinary proceedings conducted by school administration or board of education not subject to requirements of Act); O.C.G.A. § 31-7-133(a) (professional health care provider peer review proceedings are closed to public).

### C. Court mandated opening, closing.

Superior courts have jurisdiction to enforce compliance with the provisions of the Act, including the power to grant injunctions or other equitable relief. O.C.G.A. § 50-14-5(a). However, injunctive relief is only appropriate to ongoing violations of the Act, and not to wrongs that are already fully consummated. *Wiggins v. Board of Comm'rs. of Tift Cty.*, 258 Ga. App. 666, 668, 574 S.E.2d 874 (2002) (“[C]ourts cannot restrain that which has already been done.”).

## III. MEETING CATEGORIES — OPEN OR CLOSED.

Note that depending upon specific circumstances other provisions of the Georgia Code may be applicable and override the Act:

### A. Adjudications by administrative bodies.

The Act does not generally exempt agency adjudicative sessions.

There are limited exceptions applicable to certain agencies and subjects. *See, e.g.*, O.C.G.A. § 50-14-3(3) (exempting some law enforcement meetings); O.C.G.A. § 50-14-3(6) (exempting some personnel discussions).

#### **B. Budget sessions.**

The Act does not exempt budget sessions.

#### **C. Business and industry relations.**

The Act does not exempt meetings regarding business or industry relations.

#### **D. Federal programs.**

The Act does not exempt meetings regarding federal programs.

#### **E. Financial data of public bodies.**

The Act does not exempt meetings concerning agency financial data. However, the Act does exempt meetings of the board of trustees or the investment committees of any public retirement system created under Title 47 when the board or committee is discussing matters pertaining to investment securities trading or portfolio positions. O.C.G.A. § 50-14-3(8).

#### **F. Financial data, trade secrets or proprietary data of private corporations and individuals.**

Although the Act does not generally exempt meetings concerning proprietary data of private corporations and individuals, the Act does exempt meetings of the governing authority or committee of a public hospital, health care facility or public regulatory agency, when discussing information related to staff privileges of doctors or the granting of abortions. O.C.G.A. § 50-14-3(5).

#### **G. Gifts, trusts and honorary degrees.**

The Act does not exempt meetings relating to gifts, trusts or honorary degrees.

#### **H. Grand jury testimony by public employees.**

The Act exempts grand jury meetings. O.C.G.A. § 50-14-3(3).

#### **I. Licensing examinations.**

The Act does not exempt licensing examinations.

#### **J. Litigation; pending litigation or other attorney-client privileges.**

A meeting otherwise required to be open to the public may be closed in order to consult and meet with legal counsel about pending or potential litigation. O.C.G.A. § 50-14-2. *See Local Div. 732, Amalgamated Transit Union v. Marta*, 251 Ga. 15, 303 S.E.2d 1 (1983) (public may be excluded from meetings to protect attorney-client privilege), *cert. granted and vacated on other grounds*, 465 U.S. 1016 (1984). However, the threat of legal action must be “realistic and tangible,” and more than “a mere fear or suspicion of being sued.” *Claxton Enter. v. Evans Cty. Board of Comm’rs.*, 249 Ga. App. 870, 874, 566 S.E.2d 399 (2002). Additionally, a meeting may not be closed for advice or consultation on whether to close the meeting. O.C.G.A. § 50-14-2.

#### **K. Negotiations and collective bargaining of public employees.**

The Act does not exempt meetings concerning negotiations and collective bargaining of public employees.

#### **L. Parole board meetings, or meetings involving parole board decisions.**

The Act exempts deliberations and voting of the State Board of Pardons and Paroles. O.C.G.A. § 50-14-3(2). *Saleem v. Snow*, 217 Ga. App. 883, 460 S.E.2d 104 (1995). However, hearings conducted by

or on behalf of the board are required to be public. O.C.G.A. § 42-9-53(d). The board may close meetings convened to receive information or evidence for or against clemency or in revocation proceedings, but only if the board determines that holding an open meeting would present substantial risk of harm or injury to a witness. O.C.G.A. § 50-14-3(2).

#### **M. Patients; discussions on individual patients.**

The Act exempts meetings regarding patients only when the meeting is of the governing authority or a committee of a public hospital or health care facility convened to decide whether to grant an abortion under state or federal law. O.C.G.A. § 50-14-3(5).

*Coroner’s Inquests.* A coroner’s inquest constitutes a “meeting” within the meaning of the Act and must be conducted in a manner open to the public. *Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991).

#### **N. Personnel matters.**

The Act exempts discussions and deliberations upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee. O.C.G.A. § 50-14-3(6). However, the exemption for discussions and deliberations does not apply to meetings in which the agency receives evidence or hears arguments on charges filed to determine disciplinary action or dismissal of a public officer or employee. O.C.G.A. § 50-14-3(6). The Act also exempts meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges. O.C.G.A. § 50-14-3(5).

##### **1. Interviews for public employment.**

Although the Act generally exempts meetings when discussing the appointment or hiring of a public employee, it does provide that agency meetings “to discuss or take action on the filling of a vacancy in the membership of the agency itself” shall be open to the public. O.C.G.A. § 50-14-3(6).

##### **2. Disciplinary matters, performance or ethics of public employees.**

Meetings “receiving evidence or hearing arguments on charges filed to determine disciplinary action or dismissal” must be open to the public. O.C.G.A. § 50-14-3(6). *See Moon v. Terrell Cty.*, 249 Ga. App. 567, 548 S.E.2d 680 (2001) (commissioners violated Act when they considered evidence in closed session).

##### **3. Dismissal; considering dismissal of public employees.**

Meetings held solely to discuss the possible dismissal of an employee may be closed. O.C.G.A. § 50-14-3(6). However, meetings that will also involve the presentation of evidence or “arguments on charges filed to determine disciplinary action or dismissal” must be open to the public. O.C.G.A. § 50-14-3(6). *See Moon v. Terrell Cty.*, 249 Ga. App. 567, 548 S.E.2d 680 (2001) (commissioners violated Act when they considered evidence in closed session). *Cf. Brennan v. Chatham County Comm’rs*, 209 Ga. App. 177, 433 S.E.2d 597 (1993) (commissioners’ vote in closed session predated the 1992 amendment to the Act requiring votes to be open to the public).

#### **O. Real estate negotiations.**

The Act exempts portions of meetings during which an agency is discussing the future acquisition of real estate, subject to the Act’s notice and minutes requirements. O.C.G.A. § 50-14-3(4). However, those portions of the minutes that identify the real estate to be acquired do not have to be disclosed until the real estate acquisition has been completed, terminated, or abandoned or court proceedings initiated. O.C.G.A. § 50-14-3(4).

**P. Security, national and/or state, of buildings, personnel or other.**

The Act does not exempt meetings regarding national or state security, or any other type of security. However, it does exempt meetings to discuss records that are exempt from the Open Records Act under the homeland security exception. O.C.G.A. § 50-14-3(9). Also, meetings of the Georgia Bureau of Investigation (GBI) and other law enforcement agencies are exempt. O.C.G.A. § 50-14-3(3).

**Q. Students; discussions on individual students.**

The Act does not exempt meetings regarding students. In fact, the Georgia Supreme Court held that even when student committees handle student disciplinary matters the meetings cannot be closed. *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 854, 427 S.E.2d 257 (1993) (Board of Regents “cannot hide behind meeting at which official action is taken on their behalf, and for which they are responsible, by contending that a group of students, none of whom are members of the [Board] is taking that action”).

**IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS**

**A. When to challenge.**

**1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?**

The Act does not specifically require courts to give priority to litigation to enforce the Act but expedited treatment may be sought and is often afforded depending upon the facts of the particular case.

**2. When barred from attending.**

Proceed with your challenge as soon as you have been denied access or have been informed that you will be denied access.

**3. To set aside decision.**

The Act provides that any suit contesting an action taken by an agency in alleged violation of the Act must be commenced within 90 days of the date the contested action was taken. O.C.G.A. § 50-14-1(b). See *Walker v. City of Warner Robbins*, 262 Ga. 551, 422 S.E.2d 555 (1992) (relief not available under the Act because suit was commenced more than 90 days after agency action).

**4. For ruling on future meetings.**

Georgia’s superior courts have great discretion to grant injunctive relief. Relief applicable only to future proceedings could be pleaded for at any time. However, equitable relief is generally unavailable where violations of the Act are fully consummated and further violations are not imminent. *Wiggins v. Board of Comm’rs. of Tift Cty.*, 258 Ga. App. 666, 668, 574 S.E.2d 874 (2002) (“courts of equity jurisdiction will not intervene to ‘allay mere apprehensions of injury, but only where the injury is imminent and irreparable and there is no adequate remedy at law;”) (quoting *Morton v. Gardner*, 242 Ga. 852, 856, 252 S.E.2d 413 (1979)).

**5. Other.**

Actions contesting a zoning decision of a local governing authority must be commenced “within the time allowed by law for appeal of such zoning decision.” O.C.G.A. § 50-14-1(b).

**B. How to start.**

**1. Where to ask for ruling.**

**a. Administrative forum.**

The Act does not provide for an administrative forum.

**(1). Agency procedure for challenge.**

The courts provide the exclusive avenue for challenging violations of the Act.

**(2). Commission or independent agency.**

The Act does not provide for oversight by any commission or independent agency.

**b. State attorney general.**

Although the Georgia Attorney General lacks power to directly enforce the Act, the Attorney General nevertheless may bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance. O.C.G.A. § 50-14-5(a). Additionally, the Attorney General issues opinions regarding open meetings questions submitted by heads of state governmental agencies and members of the Georgia legislature. See, e.g., 1995 Op. Att’y Gen. No. U95-22 (applying Act to county board of tax assessors); 1995 Op. Att’y Gen. No. U95-15 (meeting where grievances against school personnel were heard should be open). The Office of the Attorney General has also established an informal mediation program whereby citizens requesting information may submit complaints and ensure that local governments fulfill their obligations under the Act.

**c. Court.**

The Georgia superior courts, at least one of which is located in each of Georgia’s 159 counties, have jurisdiction to enforce compliance with the Act. O.C.G.A. § 50-14-5(a).

**2. Applicable time limits.**

A suit to invalidate an official agency action must be commenced within 90 days of the action. O.C.G.A. § 50-14-1(b). The Act contains no limitation on commencement of a suit to make minutes and past agendas available to the public. See *Guthrie v. Dalton School Dist.*, 213 Ga. App. 849, 446 S.E.2d 526 (1994).

**3. Contents of request for ruling.**

Any request for a ruling from a court of law should state the grounds on which the request is based, including the specific provisions of the Act that the agency has violated or will violate in the future. Suits to enforce the Act are typically initiated by filing with the court a verified complaint against the agency officials who have violated or threatened to violate the Act, explaining the violation and describing the relief sought. The complaint typically seeks issuance of an injunction to remedy past and/or prevent future violations and is accompanied by a motion and supporting memorandum to the same effect. Where time is an issue, the motion should request entry of an immediate injunction and request that the court hear the matter on an emergency basis. Although *mandamus* to compel performance of official duties is available by statute in Georgia, the statutory *mandamus* procedures are such that proceeding by *mandamus* can be unnecessarily time consuming. O.C.G.A. § 9-6-20, *et seq.*

**4. How long should you wait for a response?**

The damage from an improper closing can be instantaneous and sometimes irreparable. Citizens seeking to open meetings should not delay long before seeking injunctive relief in superior court.

**5. Are subsequent or concurrent measures (formal or informal) available?**

No subsequent or concurrent measure, either formal or informal, are mentioned in the Georgia Code.

**C. Court review of administrative decision.**

**1. Who may sue?**

A suit to enforce compliance with the Act may be brought in superior court “by any person, firm, corporation, or other entity.” O.C.G.A. § 50-14-5(a). In addition, the Attorney General may bring civil or criminal actions to enforce compliance with the Act. O.C.G.A. § 50-14-5(a).

## 2. Will the court give priority to the pleading?

The Act does not specifically require a court to give priority to litigation to enforce the Act, but expedited treatment may be sought and is often afforded depending upon the facts of the case.

### 3. Pro se possibility, advisability.

A suit to enforce the Act may be brought *pro se*, but legal assistance may be useful in presenting the issues and expediting their resolution. See also O.C.G.A. § 50-14-5(b) (authorizing the award of attorney fees to the prevailing party under certain circumstances).

## 4. What issues will the court address?

### a. Open the meeting.

The Georgia superior courts have wide-ranging equitable powers. The court may grant an injunction or other equitable relief to enforce compliance with the Act, including opening an appropriate meeting. However, injunctive relief is only appropriate to ongoing violations of the Act, and not to wrongs that are already fully consummated. *Wiggins v. Board of Comm'rs. of Tift Cty.*, 258 Ga. App. 666, 668, 574 S.E.2d 874 (2002) (“[C]ourts cannot restrain that which has already been done.”).

The court may also order that the transcript, if any, of an improperly closed meeting be made available to the public. However, courts recognize that releasing a transcript or even a videotape is not equivalent to presence at an open meeting. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994) (agency did not substantially comply with the Act when it provided petitioner with a videotape of the meeting).

### b. Invalidate the decision.

Official action taken at a meeting closed to the public in violation of the Act “shall not be binding.” O.C.G.A. § 50-14-1(b).

### c. Order future meetings open.

The court has jurisdiction to grant injunctions or other equitable relief to enforce compliance with the statute and may issue an injunction requiring that future meetings be open to the public. However, injunctive relief is only appropriate to ongoing violations of the Act, and not to wrongs that are already fully consummated. In the absence of an apprehension of an imminent violation, courts will generally not issue injunctions ordering parties to obey existing laws. See *Wiggins v. Board of Comm'rs. of Tift Cty.*, 258 Ga. App. 666, 574 S.E.2d 874 (2002).

## 5. Pleading format.

Suits to enforce the Act are typically initiated by filing with the court a verified complaint against the agency officials who have violated or threatened to violate the Act, explaining the violation and describing the relief sought. The complaint typically seeks issuance of an injunction to remedy past and/or prevent future violations and is accompanied by a motion and supporting memorandum to the same effect. Where time is an issue, the motion should request entry of an immediate injunction and request that the court hear the matter on an emergency basis. Although *mandamus* to compel performance of official duties is available by statute in Georgia, the statutory *mandamus* procedures are such that proceeding by *mandamus* can be unnecessarily time consuming. O.C.G.A. § 9-6-20, *et seq.*

## 6. Time limit for filing suit.

The Act requires that a suit seeking to invalidate an official agency action be filed within 90 days from the contested action. O.C.G.A. § 50-14-1(b). Suits contesting a zoning decision of a local governing authority made during a closed meeting in violation of the Act must be commenced within the time allowed by law for appeal of such zoning decision. O.C.G.A. § 50-14-1(b). The Act contains no time limit for commencing suits seeking to make minutes or agendas from past meetings available to the public.

## 7. What court.

Georgia’s superior courts have jurisdiction to enforce compliance with the Act. O.C.G.A. § 50-14-5(a).

## 8. Judicial remedies available.

The superior courts have jurisdiction to grant relief in law or equity. O.C.G.A. § 50-14-5(a). The court may grant an injunction requiring that future agency meetings be made open to the public or that the agency comply with the Act’s notice and minutes provisions. The court may also grant an injunction requiring an agency to make minutes, agendas, and transcripts of past meetings available to the public. The Act also provides for suits to invalidate official agency actions taken in violation of the Act’s provisions. O.C.G.A. § 50-14-1(b).

The Georgia Supreme Court has held that a public official who participates in an erroneously closed meeting is subject to recall under the 1989 Recall Act. In a concurring opinion elaborating on the “practical side” of the majority opinion Justice Fletcher wrote, “if there is the slightest doubt, or any question whatsoever, as to whether a matter can be the subject of a closed meeting, DO NOT CLOSE.” *Steele v. Honea*, 261 Ga. 644, 647, 409 S.E.2d 652 (1991) (Fletcher, J., concurring).

## 9. Availability of court costs and attorneys’ fees.

In any successful action to enforce the Act, the court must award attorney fees and reasonable litigation expenses if the court determines that the violation was “without substantial justification” and no special circumstances exist. O.C.G.A. § 50-14-5(b). See, e.g., *Slaughter v. Brown*, 269 Ga. App. 211, 603 S.E.2d 706 (2004) (lack of bad faith does not support a finding of special circumstances sufficient to decrease the award of litigation costs); *Evans Cty. Board of Comm'rs. v. Claxton Enter.*, 255 Ga. App. 656, 566 S.E.2d 399 (2002) (absence of official action at a meeting does not support a finding of special circumstances sufficient to decrease the award of costs for both trial and appellate litigation). *But cf. Moon v. Terrell Cty.*, 260 Ga. App. 433, 579 S.E.2d 845 (2003) (commissioners acted with substantial justification when they closed the meeting in order to protect plaintiff’s privacy rights).

## 10. Fines.

The Act makes knowing and willful violation of its provisions a misdemeanor punishable by a fine of up to \$500. O.C.G.A. § 50-14-6. See also *Jersawitz v. Eldridge*, 262 Ga. 19, 413 S.E.2d 725 (1992) (judge lacked authority to order judicial officers and judges not to issue arrest warrants based on alleged violations of Open Records Act).

## 11. Other penalties.

Officials who violate the Act are subject to recall. O.C.G.A. § 21-4-3. See *Steele v. Honea*, 261 Ga. 644, 409 S.E.2d 652 (1991).

## D. Appealing initial court decisions.

### 1. Appeal routes.

The Georgia Constitution provides that the Supreme Court shall have appellate jurisdiction of “[a]ll equity cases.” Ga. Const., Art. 6, § 6, 3(2). However, the Supreme Court has held that “[c]ases in which the grant or denial of [equitable] relief was merely ancillary to underlying issues of law, or would have been a matter of routine once the underlying issues of law were resolved, are not ‘equity cases.’” *Beachamp v. Knight*, 261 Ga. 608, 609, 409 S.E.2d 208 (1991), and that, even where equitable enforcement of the Act is sought, an appeal may properly be taken to the Court of Appeals if the appeal involves primarily an issue of law, such as the construction and application of the Act. See *id.* The Georgia Supreme Court has in recent years transferred to the Court of Appeal direct appeals taken from the denial of injunctive relief sought pursuant to the Open Records Act. See, e.g., *Doe v. Board of Regents*, 215 Ga. App. 684, 684 n.1, 452 S.E.2d 776 (1994); *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 151, 447 S.E.2d 41 (1994). *But cf. Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995) (Supreme Court exercised direct appellate

jurisdiction where one issue on appeal involved authority of trial court to grant injunctive relief).

## 2. Time limits for filing appeals.

A notice of appeal must be filed within 30 days after entry of final judgment. *See* O.C.G.A. § 5-6-38.

## 3. Contact of interested amici.

The Reporters Committee for Freedom of the Press files *amicus* briefs in important cases before the state's highest courts, as does the Georgia First Amendment Foundation, the Georgia Press Association, and various media entities in the state.

## V. ASSERTING A RIGHT TO COMMENT.

### A. Is there a right to participate in public meetings?

The Act does not address whether the public has a right to participate in public meetings, but the Act does require that an agency make available at least two days prior to a meeting an agenda of matters expected to come before it. O.C.G.A. § 50-14(e)(1).

### B. Must a commenter give notice of intentions to comment?

The Act does not address whether a commenter must give notice of his intention to comment, but "failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item." O.C.G.A. § 50-14(e)(1). *See, e.g., Lancaster v. Effingham Cty.*, 2005 Ga. App. LEXIS 529 (2005).

### C. Can a public body limit comment?

The Act does not address whether an agency can limit comment, but "failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering it." O.C.G.A. § 50-14(e)(1). *See, e.g., Lancaster v. Effingham Cty.*, 2005 Ga. App. LEXIS 529 (2005).

### D. How can a participant assert rights to comment?

The Act does not set forth any particular method to assert a right to comment.

### E. Are there sanctions for unapproved comment?

The Act does not set forth any sanction for unapproved comment.

## Appendix

## Statute

### Open Records

*Title 50. State Government*

*Chapter 18. State Printing and Documents*

*Article 4. Inspection of Public Records*

*§ 50-18-70. Right of public to inspect records*

(a) As used in this article, the term "public record" shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public record" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. Records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such agency, public agency, or public office. As used in this article, the term "agency" or "public agency" or "public office" shall have the same meaning and application as provided for in the definition of the term "agency" in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

(b) All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.

(d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.

(e) In a pending proceeding under Chapter 13 of this title, the "Georgia Administrative Procedure Act," or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-200, or any personnel proceeding authorized under Part 7 and Part 11 of Article 17 and Article 25 of Chapter 2 of Title 20.

(f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days. 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; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state stay-

ing or refusing the requested access to such records.

(g) At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records.

*§ 50-18-71. Copies or extracts from public records; supervision of persons photographing records; fees and charges*

(a) In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.

(b) Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.

(c) Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed 25¢ per page.

(d) In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(e) An agency shall utilize the most economical means available for providing copies of public records.

(f) Where information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section.

(g) Whenever any person has requested one or more copies of a public record and such person does not pay the copying charges and charges for search, retrieval, or other direct administrative costs in accordance with the provisions of this Code section:

(1) A county or a department, agency, board, bureau, commission, authority, or similar body of a county is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;

(2) A municipal corporation or a department, agency, board, bureau, commission, authority, or similar body of a municipal corporation is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation;

(3) A consolidated government or a department, agency, board, bureau, commission, authority, or similar body of a consolidated government is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the consolidated government;

(4) A county school board or a department, agency, board, bureau, commission, authority, or similar body of a county school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;

(5) An independent school board or a department, agency, board, bureau, commission, authority, or similar body of an independent school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation; and

(6) A joint or regional authority or instrumentality which serves one or more counties and one or more municipal corporations, two or more counties, or two or more municipal corporations is authorized to collect such charges in

any manner authorized by law for the collection of taxes, fees, or assessments owed to the county if a county is involved with the authority or instrumentality or in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation if a municipal corporation is involved with the authority or instrumentality.

This subsection shall apply whether or not the person requesting the copies has appeared to receive the copies.

*§ 50-18-71.1. Exhibits tendered as evidence in criminal or civil trial; approval by judge*

(a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.

(b) In the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit:

(1) A photograph;

(2) A photocopy;

(3) A facsimile; or

(4) Another reproduction.

(c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost of materials or supplies and a reasonable charge for time spent producing the photograph, facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section 50-18-71.

*§ 50-18-71.2. Agencies required to provide estimate of fees as condition for assessing fees*

Any agency receiving a request for public records shall be required to notify the party making the request of the estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 as a condition of compliance with the provisions of this article prior to fulfilling the request as a condition for the assessment of any fee; provided, however, that no new fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means.

*§ 50-18-72. Exception of certain records*

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated;

(4.1) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party, such statement to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally

or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term “need” means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;

(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, this subparagraph will apply only to accident reports on accidents that occurred more than 30 days prior to the request and which shall have the name, street address, telephone number, and driver’s license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

(5) Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(6)(A) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; and

(B) Engineers’ cost estimates and pending, rejected, or deferred bids or proposals until such time as the final award of the contract is made or the project is terminated or abandoned. The provisions of this subparagraph shall apply whether the bid or proposal is received or prepared by the Department of Transportation pursuant to Article 4 of Chapter 2 of Title 32, by a county pursuant to Article 3 of Chapter 4 of Title 32, by a municipality pursuant to Article 4 of Chapter 4 of Title 32, or by a governmental entity pursuant to Article 2 of Chapter 91 of Title 36;

(7) Notwithstanding any other provision of this article, an agency shall not be required to release those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency as that term is defined in paragraph (1) of subsection (a) of Code Section 50-14-1, or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to the person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or ap-

pointment process open to the public, it shall not be required to delay 14 days to take final action on the position. The agency shall not be required to release such records with respect to other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(8) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, provided that this exception shall not have any application with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

(9) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(10) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(10.1) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

(10.2) Agricultural or food system records, data, or information that are considered by the Georgia Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term “critical infrastructure” shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(10.3) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Georgia Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term “national animal identification program” means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(11) Records that contain site specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(11.1) An individual’s social security number and insurance or medical information in personnel records, which may be redacted from such records;

(11.2) Records that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the

installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(11.3)(A) An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, including a utility account number, password used to access his or her account, financial data or information, and insurance or medical information in all records, and if technically feasible at reasonable cost, day and month of birth, which shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that this news media organization exception for access to social security numbers and day and month of birth and the other protected information set forth in this subparagraph shall not apply to teachers, employees of a public school, or public employees as set forth in paragraph (13.1) of this subsection. For purposes of this subparagraph, the term "public employee" means any nonelected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy. Any prosecution pursuant to this paragraph shall be in accordance with

the procedure in subsection (b) of Code Section 50-18-74.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(12) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

(13) Records that would reveal the home address or telephone number, social security number, or insurance or medical information of employees of the Department of Revenue, law enforcement officers, firefighters as defined in Code Section 25-4-2, judges, emergency medical technicians and paramedics, scientists employed by the Division of Forensic Sciences of the Georgia Bureau of Investigation, correctional employees, and prosecutors or identification of immediate family members or dependents thereof;

(13.1) Records that reveal the home address, the home telephone number, the e-mail address, or the social security number of or insurance or medical information about public employees or teachers and employees of a public school. For the purposes of this paragraph, the term "public school" means any school which is conducted within this state and which is under the authority and supervision of a duly elected county or independent board of education. Public disclosure shall also not be required for records that reveal the home address, the home telephone number, the e-mail address, or the social security number of or insurance or medical information about employees or teachers of a nonpublic school;

(13.2) Records that are kept by the probate court pertaining to guardianships and conservatorships except as provided in Code Section 29-9-18;

(14) Acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, to the extent such records would reveal the name, home address, employment address, home telephone number, employment telephone number, or hours of employment of any individual or would otherwise identify any individual who is participating in, or who has expressed an interest in participating in, any such program. As used in this paragraph, the term "carpooling or ridesharing program" means and includes, but is not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(15)(A) Records, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks, which plan depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks, which devices depend for their effectiveness in whole or in part upon a lack of general public knowledge; and

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts.

(B) In the event of litigation challenging nondisclosure pursuant to this

paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in divisions (i) and (iv) of subparagraph (A) of this paragraph, the term “activity” means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(16) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (3) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point, which information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(17) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(18) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon such toll project. Such financial records shall include but not be limited to social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user’s name;

(19) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term “transact business” means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year and the term “substantial interest” means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(20) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system’s TransCard or SmartCard system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard or SmartCard or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user’s name;

(21) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(22) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16, which are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies; or

(23) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127.

(b) This article shall not be applicable to:

(1) Any trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency or to data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues,

whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

(2) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This subsection applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works; or

(3) Unless otherwise provided by law, contract, bid, or proposal, records consisting of questions, scoring keys, and other materials, constituting a test that derives value from being unknown to the test taker prior to administration, which is to be administered by the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test.

These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.

(c)(1) All public records of hospital authorities shall be subject to this article except for those otherwise excepted by this article or any other provision of law.

(2) All state officers and employees shall have a privilege to refuse to disclose the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity. Personally identifiable information shall mean any information which if disclosed might reasonably reveal the identity of such person including but not limited to the person’s name, address, and social security number. The identity of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identity of the informant already has been disclosed otherwise.

(d) This article shall not be applicable to any application submitted to or any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms. This subsection shall not preclude law enforcement agencies from obtaining records relating to licensing and possession of firearms as provided by law.

(e) This article shall not be construed to repeal:

(1) The attorney-client privilege recognized by state law to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or 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; provided, however, attorney-client information may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which said proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue;

(2) The confidentiality of attorney work product; or

(3) State laws making certain tax matters confidential.

(f)(1) As used in this article, the term:

(A) “Computer program” means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(B) “Computer software” means one or more computer programs, existing in any form, or any associated operational procedures, manuals, or other documentation.

(2) This article shall not be applicable to any computer program or computer software used or maintained in the course of operation of a public office or agency.

(g) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(h) Within the three business days applicable to response to a request for access to records under this article, the public officer or agency having control of such record or records, if access to such record or records is denied in whole or in part, shall specify in writing the specific legal authority exempting such record or records from disclosure, by Code section, subsection, and paragraph. No addition to or amendment of such designation shall be permitted thereafter or in any proceeding to enforce the terms of this article; provided, however, that such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this article, whichever is sooner; provided, further, that the right to amend or supplement based upon discovery of an error may be exercised on only one occasion. In the event that such designation includes provisions not relevant to the subject matter of the request, costs and reasonable attorney's fees may be awarded pursuant to Code Section 50-18-73.

#### § 50-18-73. Actions to enforce provisions

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this article.

(b) 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. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(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 having provided access to such information.

#### § 50-18-74. Penalties

(a) Any person knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$ 100.00.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40, which citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

#### § 50-18-75. Privileged communications

Communications between the Office of Legislative Counsel and the following persons shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege.

§ 50-18-76. *Vital records temporarily kept in office of judge or clerk of any court not open to inspection*

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Community Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

§ 50-18-77. *Procedures and fees not applicable when records requested by grand jury, taxing authority, law enforcement agency, or prosecuting attorney*

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.

## Open Meetings

### Title 50. State Government

#### Chapter 14. Open and Public Meetings

§ 50-14-1. *Meetings of departments, agencies, boards, etc., to be open to public; notice of meetings and agenda*

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, 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, 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

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing authority of any agency as defined in this paragraph and which allocation constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Meeting" means the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter, official business, or policy to the governing body are to be formulated, presented, or discussed. The assembling together of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities under the jurisdiction of such agency or for the purposes of meeting with the governing bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and at which no final official action is to be taken shall not be deemed a "meeting."

(b) Except as otherwise provided by law, all meetings as defined in subsection (a) of this Code section shall be open to the public. Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken, provided that any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual, sound, and visual and sound recording during open meetings shall be permitted.

(d) Every 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 and maintained in a conspicuous place available to the public at the regular meeting place of the agency. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting. Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meetings, the agency shall give due notice thereof. "Due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and giving of 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 in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in said county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly "due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least 24 hours in advance of the called meeting. When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to said county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required or permitted by this subsection may be given by telephone.

(e)

(1) Prior to any meeting, the agency holding such meeting shall make available an agenda of all matters expected to come before the agency at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting preclude considering and acting upon such item.

(2) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting of any agency. The minutes of a meeting of any agency shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular meeting of the agency; provided, however, nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Said minutes shall, as a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded and in all other cases 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.

(f) An agency with state-wide jurisdiction shall be authorized to conduct meetings by telecommunications conference, provided that any such meeting is conducted in compliance with this chapter.

*§ 50-14-2. Attorney-client privilege and confidential tax matters not affected*

This chapter shall not be construed so as to repeal in any way:

(1) 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; and

(2) Those tax matters which are otherwise made confidential by state law.

*§ 50-14-3. Exceptions*

This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition said board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings;

(4) Meetings when any agency is discussing the future acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a meeting; provided, however, the disclosure of such portions of the minutes as would identify real estate to be acquired may be delayed until such time as the acquisition of the real estate has been completed, terminated, or abandoned or court proceedings with respect thereto initiated;

(5) Meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law;

(6) 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 but not when receiving evidence or hearing argument on charges filed to determine disciplinary action or dismissal of a public officer or employee. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. 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;

(7) Adoptions and proceedings related thereto;

(8) Meetings of the board of trustees or the investment committee of any public retirement system created by Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and

(9) Meetings when discussing any records that are exempt from public inspection or disclosure pursuant to paragraph (15) of subsection (a) of Code Section 50-18-72 or when discussing any information a record of which would be exempt from public inspection or disclosure under said paragraph.

*§ 50-14-4. Procedure for closure of meetings*

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b) When any meeting of an agency is closed to the public pursuant to sub-

section (a) of this Code section, the chairperson or other person presiding over such meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

*§ 50-14-5. Superior court jurisdiction*

(a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in

not complying with this chapter, 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. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(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 having provided access to such information.

*§ 50-14-6. Violations relating to open meetings*

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$ 500.00.

