



EFFINGHAM COUNTY BOARD OF COMMISSIONERS
Human Resources Standards of Practice

Standards of Practice: Section 2.23	Issue Date: 11/3/2020 New <u>X</u> Revised _____ Supersedes Policy Dated:
Title: Open Records Requests	Approved By Effingham County Board of Commissioners

2.23 – OPEN RECORDS REQUESTS

A. STANDARD

1. The open records law is a state law that requires counties and other governmental agencies to provide public access to documents. It was enacted to make government more open to public scrutiny by requiring that documents and records maintained by government offices be produced for inspection and copying at any person's request. You may be criminally liable for failure to strictly comply with the requirements of this law. This policy is designed to alert you to your responsibilities.

2. The County Clerk is assigned as the Open Records Officer for the County. Should you need assistance regarding a request under the Georgia Open Records Act you contact the County Clerk. Requests can be submitted via our website, email or postal mail.

3. Should any employee receive an Open Records Request, whether verbal or in writing, you must direct the requestor to the County Clerk. You should further respond to the requestor explaining the request response timeline does not begin until the County Clerk receives the request. Other than notifying the requestor of the requirement to send the Open Records Request to the County Clerk, no response to the Open Records Request should be given until the County Clerk has vetted the request for processing.

B. STANDARD

1. **General Responsibilities Under the Open Records Law**

Whenever any individual requests a copy of "public records" or requests the opportunity to review "public records," the department records custodian must make the copies or allow the individual the opportunity to review the documents within

1. **General Responsibilities Under the Open Records Law Continued:**



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three business days if the records are available and are not “exempt” from the open records law after being reviewed and vetted by the County Clerk. As explained in further detail below, the County Clerk may charge a “reasonable fee,” on behalf of the county, for complying with this request. If the estimated “reasonable fee” is greater than \$25, then the county must provide the individual with a written estimate of the fee.

2. Public Records

The most important thing to remember about the open records law is that you must assume in almost all situations that everything in your department is a public record that is subject to inspection, unless it falls within one of the specific statutory exemptions to the open records law. Public records include letters, internal memoranda, invoices, requisitions, and reports maintained by or in your department. Penciled notes, e-mails, desk diaries, agendas, calendars, rolodexes, contact lists, and telephone message slips may all be subject to disclosure. Even county records that are not physically located in your office, such as records kept in storage, archives, or at your home are open records. These may also include documents maintained by a private person or company on behalf of your department. You cannot exempt records from disclosure by asking a private company to undertake county work, to assume custody over county documents, or to conduct its own investigation or study of county activities. Public records also include information that is not on standard paper in printed form. Maps, plats, ledgers, photographs, directories to records, information maintained on CDs, DVDs, jump drives, microfiche, tapes, and on digital data storage (such as cloud storage) as well as information stored on computers such as databases, spreadsheets, electronic files, etc., may be considered public records.

3. E-Mails, Texts and Instant Messages are Public Records

E-mails, text or instant messages (county business and personal) that you have received or sent on a county computer or county issued electronic device are subject to the Open Records Law. Any e-mails, text or instant messages relating to county business that you may have received or sent from your personal computer or electronic device are also public records. Furthermore, records that are stored in the server for your computer network are subject to disclosure. Comments made and information provided on a social networking site such as Facebook, LinkedIn, Instagram, or Twitter that is maintained by the county are also be subject to disclosure. The key to deciding whether information is open to public inspection is asking whether



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3. **E-Mails, Texts and Instant Messages are Public Records Continued:**

it is prepared and maintained or received in the course of the operation of the county, regardless of its location or form.

4. **Destruction of Records**

You may not delete, throw away, shred, or destroy county records except in accordance with the schedule contained in the records management program adopted by the board of commissioners pursuant to O.C.G.A. § 50-18-99. The records management program explains how long each type of record must be kept. Correspondence (i.e., emails, letters, other communications, etc.) is retained based on the subject matter and the significance of the communication which may be transitory (kept for useful life), general (kept for five years or duration of the record associated with the communication if longer than five years) or administrative (permanent). For more information on the county's records management program, please contact the County Clerk.

5. **Exemptions To The Open Records Law**

Some records are exempt from the open records law and do not have to be released to the public. These exceptions are interpreted narrowly, with the presumption that the public should have access to information regarding the operation and responsibilities of counties. Because these exceptions to the rule of disclosure are to be interpreted narrowly, and because several of these have been the subject of court rulings, please consult with the County Clerk immediately if you think that one or more exemptions apply to records you have been asked to make available. There are three types of exemptions: (1) records that you may not release; (2) records that you may, but are not required to, withhold; and (3) records that you may temporarily withhold, but must release in the future.

6. **Records That May Not Be Released**

You are not allowed to release the records listed below. The following records have been deemed to be private and protected and you could be held liable for allowing access:

- Documents that provide cable and video service provider financial information. See O.C.G.A. § 36-76-6(d).
- Documents required to be confidential pursuant to a court order. See O.C.G.A. § 50-18-71(a).



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6. **Records That May Not Be Released Continued:**

- Documents that are specifically required by the federal government to be kept confidential. See O.C.G.A. § 50-18-72(a)(1).
- Medical records. See O.C.G.A. §§ 50-18-72(a)(2) and (20).
- Documents or portions of documents that contain information the disclosure of which would be an “invasion of personal privacy.” See O.C.G.A. § 50-18-72(a)(2). County employees should not withhold documents based on this exception without first checking with the County Clerk.
- Portions of documents containing any individual’s social security number, mother’s birth name, credit card information, debit card information, bank account information, account and utility account, passwords and financial data, medical information or insurance data, unlisted telephone number, personal e-mail or cell phone number, day and month of birth, or information regarding public utility, television, internet, or telephone accounts held by private customers. See O.C.G.A. § 50-18-72(a)(20). Although you are generally prohibited from releasing this information, there are some limited situations where it may be released. For instance, this information may be released to other governmental officials and employees when they seek the information for administrative purposes. Similarly, information may be released for law enforcement purposes or pursuant to court order. A news media representative may receive social security number and day and month of birth if they submit a written request signed under oath that the information sought is in connection with news gathering and reporting. The month and day of birth of a deceased individual may be released.
- Portions of documents which would reveal a county or other public employee’s home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother’s birth name, credit card information, debit card information, bank account information, account number, utility account number, account password, financial data or information other than compensatory by the county, unlisted telephone number, or identity of the public employee’s immediate family or dependents. See O.C.G.A. § 50-18-72(a)(21).
- Portions of documents maintained by recreation programs that could reveal a child’s name, address, and phone number, if 12 years old or under. See O.C.G.A. § 50-18-72(a)(27).
- Documents or portions of documents that would reveal a trade secret. See O.C.G.A. § 50-18-72(a)(34).



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6. Records That May Not Be Released Continued:

- Documents or portions of documents that would disclose proprietary information that has not been released. See O.C.G.A. § 50-18-72(a)(35).
- Documents that are subject to the attorney-client privilege or the attorney work product confidentiality. See O.C.G.A. § 50-18-72(a)(42).
- Documents or portions of documents containing confidential tax information. See O.C.G.A. § 50-18-72(a)(43), O.C.G.A. § 48-2-15 and/or O.C.G.A. § 48-5-314(a).
- Computer programs and software. See O.C.G.A. § 50-18-72(a)(44).
- Unless otherwise permitted by law, original trial exhibits without the approval of the judge assigned to the case. However, in most cases a copy, photograph, or other reproduction of a trial exhibit is an open record. See O.C.G.A. § 50-18-72(c).
- Vital records. See O.C.G.A. §§ 50-18-76; 31-10-25; 19-7-46.1.
- Confidential evaluations relating to the appointment or hiring of a public officer or employee. See O.C.G.A. § 50-18-72(a)(7).
- Documents or portions of documents that would reveal any component in the process used to execute or adopt an electronic signature. See O.C.G.A. § 50-18-72(a)(23).

7. Records That May Be Withheld

The following records may, but are not required to be, withheld. In other words, although you are not required to release the following records, they may be released.

- Documents or portions of documents compiled for law enforcement or prosecution purposes that would disclose (1) the identity of a confidential source, (2) confidential investigative or prosecution material that would endanger the life or physical safety of an individual, or (3) the existence of a confidential surveillance or investigation. See O.C.G.A. § 50-18-72(a)(3).
- Georgia Uniform Motor Vehicle Accident Reports. However, certain individuals supplying a written statement of need may be supplied with a copy, such as the parties and witnesses involved or injured in the accident (and their attorneys or other representatives), the insurance companies, a district attorney, a solicitor, a law enforcement officer, individuals with a personal, professional or business connection with a party to the accident, an individual identified in the accident report, an individual that owns or leases one of the vehicles (or other property) damaged in the accident, an individual who may be liable as a result of the accident, an individual



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7. Records That May Be Withheld Continued:

conducting “public interest” research, a representative of a news media organization, or an attorney needing the accident report as part of a criminal case or an investigation involving the safety of a road, railroad crossing, or intersection. See O.C.G.A. § 50-18-2(a)(5).

- Documents that would reveal the location or character of a historic property that the Division of Historic Preservation of the Department of Natural Resources has determined the disclosure of which would create a substantial risk of harm, theft, or destruction to the property. See O.C.G.A. § 50-18-72(a)(14).

- Records of farm water use by individual farms determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105. See O.C.G.A. § 50-18-72(a)(15)

- Documents that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats, the disclosure of which has been determined by the Department of Natural Resources to create a substantial risk of harm, theft, or destruction to the species or habitat. See O.C.G.A. § 50-18-72(a)(18).

- Documents or portions of documents that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, and other data developed by the county in connection with servicing, maintaining, operating, selling, or leasing a burglar alarm system, fire alarm system, or other electronic security system or with a neighborhood watch or public safety notification. See O.C.G.A. § 50-18-72(a)(19).

- Documents or portions of documents that would reveal the home address, home telephone number, social security number, insurance information or medical information, or identity of immediate family member or dependent of a public employee. See O.C.G.A. § 50-18-72(a)(21).

- Documents or portions of documents that would reveal the home and work address and telephone number, as well as hours of employment, of anyone who participates in or has expressed an interest in a county rideshare or carpool program. See O.C.G.A. § 50-18-2(a)(24).

- Records that could compromise public security including vulnerability assessments, security plans, and blueprints of public facilities. See O.C.G.A. § 50-18-72(a)(25).

- Portions of records identifying callers to 9-1-1 call centers by name, address, and phone number. See O.C.G.A. § 50-18-72(a)(26).



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7. Records That May Be Withheld Continued:

- Audio recordings of 9-1-1 calls which contain the speech in distress or extreme cries of the caller who is a minor or who died during the call. See O.C.G.A. § 50-18-72(a)(26.1).
- Audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation. See O.C.G.A. § 50-18-72(a)(26.2).
- Documents or portions of documents which would reveal licenses to carry pistols or revolvers. However, probate court judges and law enforcement agencies may obtain records related to licensing and possession of firearms. See O.C.G.A. § 50-18-72(a)(40).
- Documents or portions of documents that would reveal records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to a county. See O.C.G.A. § 50-18-72(a)(45).

8. Records That May Be Withheld Temporarily

The following records may, but are not required, to be withheld. However, if they are withheld from disclosure, they may only be held temporarily. Eventually, they must be released.

- Records of a pending investigation or prosecution of a criminal or unlawful activity by a law enforcement, prosecuting, or regulatory agency do not have to be released until the investigation is concluded. See O.C.G.A. § 50-18-72(a)(3).
- Information compiled in an investigation of a county employee or official is not required to be released until 10 days after it has been presented to the board of commissioners or other officer for action or until 10 days after the investigation is concluded. See O.C.G.A. § 50-18-72(a)(8).
- Documents or portions of documents that would reveal the location of real property (i.e., land or land and a building or other structure) that the county is considering purchasing. However, these documents must be released once the property has been purchased or the plan to purchase has been abandoned. See O.C.G.A. § 50-18-72(a)(9). Pending bids and proposals on public works and road construction projects must be withheld until the final award of the contract is made or until the project is terminated or abandoned. See O.C.G.A. § 50-18-72(a)(10).
- Documents that would identify individuals applying for or under consideration for employment or appointment as an executive head (i.e., a county



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8. **Records That May Be Withheld Temporarily Continued:**

Manager or administrator) if the hiring process is not conducted in the open. See O.C.G.A. § 50-18-72(a)(11). Once the number of individuals under consideration has been narrowed down to three, the three finalists have the opportunity to withdraw their applications rather than have their names released. The names of the three finalists must be released at least 14 days before the individual is hired.

- Documents that are of historical research value and that have had a restriction of access placed upon them by the owner/donor do not have to be released until 75 years after the date of donation. See O.C.G.A. § 50-18- 72(a)(13).

9. **The Public’s Right Under the Open Records Law**

The public has the right to a personal inspection of all public records not specifically exempted from disclosure under this law. It does not matter whether they are a citizen of our county or even our state. Similarly, except for information that could lead to identity theft (i.e., social security numbers, bank account information, credit card information, mother’s birth name, day and month of birth), it should not matter why they are seeking the records or how they will use the records. If it is a public record, then any individual may see it. Anyone may also make copies of public records, for a uniform per-page charge (10¢ per page), and, if the search or retrieval of the records imposes unusual administrative costs or burdens, for additional administrative charges (see below for further explanation of the fees that may be charged). Anyone who asks for a record has the right, within three business days of the request:

(1) to be told whether the document is an open or “public record” or whether a document (or a portion of a document) falls within one of the “exemptions” to the open records law;

(2) to be given the legal authority (by code section, subsection, and paragraph number), if all or a portion of the requested records are “exempt;”

(3) to be notified of any estimated charges for complying with the request;

and

(4) to be given copies of the requested documents, to be given the opportunity to inspect the requested documents, or to have the requested documents e-mailed, faxed, or otherwise transmitted electronically. While county records belong to the public, the county serves as the custodian or trustee of the records and must protect them from permanent removal or alteration by an individual member of the public. Although individuals have the right to personally inspect or copy records, they do not have the right to remove public records from the office of the records



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9. **The Public’s Right Under the Open Records Law**

custodian. As such, the department records custodian or his or her designee should supervise the inspection of the records.

10. **Reasonable Fees That May Be Charged Under the Open Records Law**

The law states that you may charge and collect a uniform copying fee not to exceed 10¢ per page for letter or legal sized documents and the actual cost for non-standard documents or electronic media. However, higher fees for certified copies or other specialized records may be charged, if authorized by law. The law also authorizes a reasonable charge for the search, retrieval, redaction, and other direct administrative costs for complying with a request for records. The hourly charge permitted cannot exceed the salary of the lowest-paid, full-time employee who, in the discretion of the department records custodian, has the necessary skill and training to fulfill the request. If such an administrative charge will be assessed and is estimated to be greater than \$25, you must provide it in writing to the individual requesting the documents within three business days of receiving the request, but before fulfilling the request. Additionally, you must use the most economical and efficient means available to comply with the request.

11. **Handling Open Records Requests**

Generally, all requests for records are to be responded to within three business days. Whenever possible, this means providing electronic or hard copies of the documents to the requestor or providing access. Most requests for records should be handled at the time of request without special review. However, when the request for records cannot be handled while the citizen is in the county office or if it appears that the request may require some searching or review, the following procedures should be followed.

1. While you cannot require that a request be made in writing (although you can direct all written requests to the County Clerk), you may encourage the requestor to put it in writing to provide documentation of when the open records request was received, as well as help to prevent misunderstandings over the actual records being requested.

2. Upon receipt of the request, the County Clerk should immediately date-stamp the request form.

3. Immediately review the request to ensure that it is addressed to the appropriate department or official. If you believe that the request may include



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11. **Handling Open Records Requests Continued:**

documents held by other departments, send a copy of the request to those departments immediately.

4. Within three business days of the request, determine whether the county has records that are responsive to the request. You may not destroy documents or give them to someone else to prevent releasing them. However, if such records do not exist, let the requesting party know of this fact within the three-business-day time period.

5. Within three business days of the request, the County Clerk will provide a written estimate of any copying charges or administrative charges for retrieving the documents.

6. Within three business days of the request, determine whether all or any portion of the documents are subject to any of the exemptions to the open records law. If all or any portion of the requested records are exempt, provide a written notice to the individual requesting the documents of the exemption, including the exact code section, subsection and paragraph. It is extremely important that you are complete and accurate in describing a record as exempt. Do not include any exemptions that do not actually apply to the requested records. If you have any questions about whether an exemption applies, contact the County Clerk immediately.

7. Within three business days of the request, allow the requesting party to inspect and/or copy the documents that are not exempt from the open records law. You may redact (strike through or white out) any exempt portion of the document prior to releasing it to the individual. If the records cannot be produced within this time, provide the requesting party a written description of the records and a timetable for their production.

8. You are not obligated to create documents that do not presently exist or to summarize information on a list or calculations if that has not already been created as a document or computer file. For example, you may be asked for a list of all persons delinquent in paying property taxes, but your records are maintained by street address. The appropriate response is to state that you have no document in your custody or control that contains the information requested, and that such information (e.g., delinquent taxpayers) is maintained in another way (e.g., in individual forms using street addresses). However, if the information requested is kept in a database and you can access that information by performing a search or query, then you must provide that information.



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11. **Handling Open Records Requests Continued:**

9. At all times, be courteous, professional, and prompt when handling open records requests. Remember, as county officials and employees it is one of our duties to provide access to records that belong to the public. Responding to open records requests should not be viewed as an interruption of your work—it is an important part of your work. Even when the records requestor seems adversarial, it is still your responsibility to maintain a professional and helpful attitude.

10. If practicable, post frequently requested information such as the budget, audit, minutes, and the agenda on the county website so that the public has direct access to this information.

11. If you have any questions at any stage of handling an open records request, contact the County Clerk immediately. Do not attempt to over-interpret the requirements of this policy or the open records law. If you fail to strictly adhere to all of the requirements of the open records law, you may be found guilty of a misdemeanor.