

APPENDIX A

INSPECTION OF PUBLIC RECORDS*

- 50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access.
- 50-18-71. Right of Access to make Photographs or Reproductions.
- 50-18-71.1. Approval of judge required for inspection of trial exhibits; reproduction of exhibits.
- 50-18-72. When public disclosure not required.
- 50-18-73. Jurisdiction to enforce article; Attorney's fees and litigation expenses; Good faith reliance as defense to action.
- 50-18-74. Unlawful refusal to provide access to public records or to allow copying of such records.
- 50-18-75. Confidentiality of Communications between Office of Legislative Counsel and certain persons.
- 50-18-76. Written matter exempt from disclosure under Code Section 31-10-25.

50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access.

(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 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. 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 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), 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 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 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. In no event shall this time exceed three business days.

50-18-71. Right of Access to make photographs or reproduction.

(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 authorize 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.

50-18-71.1 Approval of Judge Required for Inspection of Trial Exhibits; Reproduction of Exhibits.

(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 subsection (b), (c), (d), and (e) of Code Section 50-18-7 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 subsection (d) and (e) of Code Section 50-18-71.

50-18-72. When Public Disclosures Not Required.

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

- (1) Specifically required by the federal government 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
- (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, accident reports, and 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;
- (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) 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 Department of Transportation engineers cost estimates and rejected or deferred bid proposals except for the total amount of the bid, either received or prepared pursuant to Article 4 of Chapter 2 of title 32;
- (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 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 appointment 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 person 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. Provided, further, 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; or
- (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 restrictions 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 government of the State of Georgia.

(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; or
- (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.

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 Human Resources 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 is 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 information 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 licenses to carry pistols or revolvers, 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 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.

50-18-73. Jurisdiction to Enforce Article; Attorney's Fees and Litigation Expenses; Good Faith Reliance as Defense to Action.

(a) The Superior Courts of this state shall have jurisdiction in law and in equity to entertain 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.

(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. Unlawful Refusal to Provide Access to Public Records or to allow copying of such Records.

Reserved. Repealed by Ga. L. 1991, p. 1061, § 10, effective April 6, 1992.

50-18-75. Confidentiality of Communications between Office of Legislative Counsel and Certain Persons.

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. Written Matter exempt from Disclosure under Code Section 31-10-25.

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 Human Resources shall be open to inspection by the general public even though the other papers or documents in such file may be open to inspection. (Code 1968, §50-18-76, enacted by Ga. L. 1991, p. 1943, §1

***Editor's Note** – Printed in this appendix at the request of the city is O.C.G.A. §§50-18-70 through 50-18-76, being the state law regarding open records.