



## GEORGIA DEPARTMENT OF LAW

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### MEMORANDUM

**DATE:** April 17, 2012

**TO:** All Departments, Agencies, Commissions, Authorities, Councils, and Boards of the State of Georgia

**FROM:** Sam Olens *SSO*  
Attorney General

**RE:** Changes to Georgia's Open Records and Open Meetings Acts

We have been advised that Governor Deal will sign HB 397 today. The bill, which substantially revises Georgia's Open Records and Open Meetings Acts, will be effective immediately upon signature of the Governor.

Our goal in preparing and championing this legislation was not to substantially revise Georgia's open government law, but, first and foremost, to put it in terms that laymen and public officials alike can more readily understand. Nonetheless, the Act does make several significant changes to prior law, and I write today to highlight several key changes for your reference.

#### THE OPEN MEETINGS ACT

- The Act simplifies the definition of "meeting" to mean any gathering of a quorum of an agency's governing body at which "any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon." O.C.G.A. § 50-14-1(a)(3)(A).
- The Act makes clear that all votes must be taken in public. O.C.G.A. § 50-14-1(b). Exceptions exist only for votes to authorize settlement of matters in litigation and for preliminary votes on real estate transactions. *See* O.C.G.A. § 50-14-3(b)(1).
- The minutes requirements for meetings are clarified to include identifying those who second motions and to identify those voting for or against proposals and motions except when the vote is unanimous. O.C.G.A. § 50-14-1(e)(2)(B).

- Minutes must also be kept of executive sessions, though these are not public. Their purpose is to resolve disputes should a matter go to court regarding an executive session. O.C.G.A. § 50-14-1(e)(2)(C).
- In situations involving emergency conditions or health concerns involving a member, meetings of agencies without state-wide jurisdiction may take place in whole or part (depending on the circumstances) by teleconference. O.C.G.A. § 50-14-1(g).
- Meetings of prosecutorial agencies in the state are now not covered by the Open Meetings Act. O.C.G.A. § 50-14-3(a)(3).
- Email communications between members of an agency's governing board are now not considered a "meeting" although they remain open records. O.C.G.A. § 50-14-3(a)(8).
- The real estate exception to the Open Meetings Act has been expanded to cover the sale, lease, and appraisal of real property. O.C.G.A. § 50-14-3(b)(1).
- The personnel exception to the Open Meetings Act has been expanded to allow closed session interviews for the heads of agencies. The exception, however, now clearly does not allow closed discussions regarding an agency's employment or hiring practices. O.C.G.A. § 50-14-3(b)(2).
- The Act allows discussion in executive session of portions of records not subject to public review under the Open Records Act when there do not exist other reasonable means to protect the privacy of the information involved. O.C.G.A. § 50-14-3(b)(4).
- The Act provides a clearer rule for handling closed meetings when discussions veer into an area that should be open. O.C.G.A. § 50-14-4(b)(2).
- The Act increases the penalty to \$1,000 for first open meetings violations and to \$2,500 for subsequent violations within a 12 month period. It also allows imposition of penalties in civil actions for negligent violation of the law. O.C.G.A. § 50-14-6.

#### THE OPEN RECORDS ACT

- The Act now includes "data" and "data fields" within the definition of "public record," and it clarifies the electronic records and data that are subject to the Open Records Act and the obligations of the agency to provide such material. O.C.G.A. §§ 50-18-70(b)(2), 50-18-71(c).

- As in current law, agencies must produce the documents they can within a reasonable period not to exceed three business days, and when they cannot produce all of the requested documents in this period they must notify the requester within this period when the documents will be produced. O.C.G.A. § 50-18-71(b)(1)(A).
- While the Act still permits both oral and written requests, it allows agencies to designate an open records officer on whom written requests must be made, and it gives requesters the option of making requests to the head of the agency or the senior official at a satellite office of the agency, to a clerk so designated as the agency's records custodian, or to an agency's designated open records officer. The Act has provisions for providing adequate notice to the public when it designates an open records officer. O.C.G.A. §§ 50-18-71(b)(1)(B), 50-18-71(b)(2).
- Before seeking to enforce the Act in court a requester is required to make a written request to the agency. O.C.G.A. § 50-18-71(b)(3).
- The Act clarifies the fees agencies may impose. The cost per page is now capped at 10¢ for letter sized pages. O.C.G.A. § 50-18-71(c)(2).
- Agencies now do not have to notify requesters of charges less than \$25. In situations where the estimated costs are between \$25 to \$500 an agency must estimate the costs for the requester, but may not insist on prepayment before allowing a requester to review records. If estimated costs exceed \$500 an agency may insist on prepayment before beginning search and production. If a requester has not paid the charges for a prior request, an agency may insist on prepayment for future requests until the payment is made or the issue resolved. O.C.G.A. § 50-18-71(d).
- Requests for records by civil litigants for use in ongoing litigation must be copied to opposing counsel and copies of the records produced likewise must be produced to the counsel of record for the agency unless said counsel elects not to receive them. O.C.G.A. § 50-18-71(e).
- The Act clarifies the information a requester should provide when seeking email. O.C.G.A. § 50-18-71(g).
- Provisions are made for production of records through websites, and the Act clarifies how this relates to the production of electronic data. O.C.G.A. § 50-18-71(h).

- A number of exceptions are clarified, and several added, including among others:
  - Clarifying the scope of the exception relating to bid documents, O.C.G.A. § 50-18-72(a)(10);
  - Clarifying the exception related to records arising from the search for an agency head, O.C.G.A. § 50-18-72(a)(11);
  - Clarifying the exceptions related to the protection of personal information of citizens and of public employees, O.C.G.A. § 50-18-72(a)(20), (21);
  - Clarifying the trade secrets exception, O.C.G.A. § 50-18-72(a)(34);
  - Clarifying the law related to FERPA, O.C.G.A. § 50-18-72(a)(37);
  - Clarifying the scope of the attorney-client privilege exception, O.C.G.A. § 50-18-72(a)(41);
  - Excepting from disclosure certain proprietary insurance rating and underwriting information, O.C.G.A. § 50-18-72(a)(45); and
  - Excepting certain economic development information, O.C.G.A. § 50-18-72(a)(46), (47).
  
- As with the Open Meetings Act, the Act increases the penalty to \$1,000 for first open records violations, and to \$2,500 for subsequent violations within a 12 month period. It also allows imposition of penalties in civil actions for negligent non-compliance with the law. O.C.G.A. § 50-18-74(a).

This memo intends only to highlight significant changes in the Open Records and Open Meetings Acts. It is not meant to be exhaustive. If you have specific questions about any of the new provisions, please contact the lawyer in this office who provides general representation to your agency or Senior Assistant Attorney General Stefan Ritter.

SSO/jlm