

Open Records Law

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Disclaimer

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Public Policy

Open government is essential to a free, open, and democratic society.

Access to government records fosters confidence and trust in government.

Access to government records allows the public to evaluate how their government spends taxpayer money, as well as how efficiently it performs.

O.C.G.A. § 50-18-70



Guide to Happiness

- These are not our records
- It is not a game to make it difficult for someone to access records
- Motive of the requestor is not our concern
- Bad/hostile/negative/adversarial attitude of the requestor does not matter
- Yes, there are "troublemakers" out there
- It is always our job to provide good customer service
- Providing access to records is an important part of all of our jobs



Guide to Success in Open Records

Always start with the presumption that the record is an open record



Simple Version of How to Comply with ORA

1. Accept the request for records
2. Direct the request to the correct person (i.e., records custodian)
3. Determine whether you have the records
4. Determine whether the records or any portion of the records are subject to an exemption
5. Notify the requester of any search and retrieval costs, as well as any exemptions
6. Copy the records/prepare them for inspection within three business days of the request
7. If the records cannot be made available within three days, tell the requestor and give him or her a timetable for the release



Accept the Request

Requests may be made:

- In person
- Over the phone
- Through the website
- Through email
- By fax
- In a letter



Accept the Request

Cannot require that an open records request be in writing

Cannot require that the requestor provide his or her name

Cannot require that the requestor provide a reason

Cannot require that the requestor be a Georgia resident, taxpayer, etc.



Accept the Request

Practice tip: If the request is made by someone suing the county or city...

Notify the city or county attorney immediately if a request is received by someone suing the county or city..

Those requests are required to be made in writing with a copy to the city or county attorney..

The county attorney is also supposed to receive a free copy of whatever is given to the requestor



Direct the Request to the Records Officer

Have the commissioners or council designated a records custodian in writing?

It can be the chair, mayor, manager, clerk, department head or any other employee designated by the county.

The name of the records custodian must have been given to the legal organ and posted prominently on the county or city's website.

If a records custodian has been designated, then forward the request to that individual immediately.

If a records custodian has been designated, then all written open records requests must be given to the records custodian. However, verbal requests may be given to anyone.

Practice tip: Whether the request is verbal or in writing, properly stated, invoked the open records law, just help the person get through the process to get the requested information



Direct the Request to the Records Officer

If the governing authority has not designated a records custodian, then it is the person who maintains the records.



Determine Whether the Records Exist

If there are no documents responsive to the request, then notify the requestor

Do not have to prepare a record, summary, report, etc., that does not exist

Can be required to run a report off of a database

If you are receiving a lot of requests for information that is not in record form, it may be helpful to have someone compile the information to put on the website or make it otherwise available

If there are several documents that are responsive to the request, then have to pull together those documents

Cannot give them to the county or city attorney or any other outside party to avoid providing the documents



Records

What are records?

- Papers
- Electronic files
- Maps
- Photographs
- Electronic documents
- Metadata
- Emails
- Texts messages
- Calendars
- Phone bills
- Phone records
- Handwritten notes

kept by your county or city or by any other party on behalf of your county or city.



Meta Data

Metadata

Data about data

- When it was created
- Who created it
- Size of file
- When it was updated

Telecommunications: time of phone call, phone number, text messages



Email Records

Any email that goes through your county or city's computers, servers, networks, etc.

- City or county business related emails
- Personal email accounts accessed on your work computer
- Personal emails sent through your work
- Personal emails on your county or city mobile device

Any email involving county or city business

- City or county business related emails on your personal mobile phone
- City or county business related emails on your personal computer



Email Records and Retention

Emails and Record Retention

What is your city or county's record retention schedule?

Are you saving and deleting emails in accordance with the record retention schedule?

- Transitory emails: kept for their useful life
- Administrative support emails: short term
- Policy and program emails: long term

Deliberate destruction of records is a felony, O.C.G.A. § 45-11-1.



Phone Records

County or city calls or texts on your personal phone

Personal call or texts on your county or city phone



Calendars

Personal appointments on your city or county phone, computer or device

City or county appointments on your personal phone, computer or device



Determine Whether the Records are Exempt

Three different types of exemptions:

1. Records that can never be released and must be protected
2. Records that may or must be withheld temporarily, but eventually must be released
3. Records that may be withheld, but do not have to be withheld

Must notify the requestor of the exemption and the code section authorizing the exemption!

Check with the city or county attorney before using an exemption.



Exempt Records that Cannot Be Released

Records that can never be released and must be protected

- Sealed by court order
- Required by the federal government to be kept confidential
- Invasion of privacy -- practice tip: don't try to figure that out; contact the attorney if you genuinely believe that there may be an invasion of privacy issue
- Trade secrets -- but only if identified with an affidavit



Exempt Records that Cannot Be Released

Records that can never be released and must be protected: Confidential tax matters

Information from a business used to determine the amount of occupation tax due -- except to collect delinquent taxes or to another taxing jurisdiction.

See, O.C.G.A. § 48-13-15



Exempt Records that Cannot Be Released

Records that can never be released and must be protected: Personal Information

- Social security number
- Day and month of birth
- Mother's birth name
- Credit card
- Debit card
- Bank account number
- Passwords to access accounts
- Utility account number
- Unlisted phone number (if designated as an unlisted number in the records)
- Cell phone number
- Personal email address
- Insurance information
- Medical information



Temporarily Exempt Records

Can Wait to Release

Pending investigations of law enforcement, prosecutors and regulatory agencies -- once the investigation and/or prosecution is completed or terminated, the records must be released



Exempt Records

Discretion to Release or Withhold

Records compiled for law enforcement or prosecution purposes that would reveal surveillance or endanger the life or safety of a confidential source



Statutory Exemptions to ORA

- O.C.G.A. § 2-7-68(a): Trade secrets or commercial information obtained from applicant for registration of pesticide.
- O.C.G.A. § 2-8-29(b): Information maintained by the Department of Agriculture in the maintenance and inspection of books and records.
- O.C.G.A. § 2-13-5: Trade secrets concerning commercial feeds.
- O.C.G.A. § 2-16-3: Disparagement of perishable food products or commodities.
- O.C.G.A. § 7-1-625(c): Bank examination records.
- O.C.G.A. § 7-1-702: Georgia Crime Information Center applications for check-cashier license.
- O.C.G.A. § 7-1-1004(g): Mortgage lender and broker investigation records.
- O.C.G.A. § 10-1-207: Trade secrets pertaining to antifreeze.



Statutory Exemptions to ORA

- O.C.G.A. § 10-1-760: Trade secrets.
- O.C.G.A. § 10-9-9(e): Conviction data of Georgia World Congress Center employees.
- O.C.G.A. § 12-8-29.2(a): Information related to secret processes, devices or methods of manufacture of materials being privately processed by the Environmental Protection Division.
- O.C.G.A. § 12-8-64: Information regarding hazardous waste generators, hazardous waste transporters and owners or operators of hazardous waste treatment.
- O.C.G.A. § 12-9-19: Information relating to secret processes, devices, or methods of manufacture or production obtained in the administration of conservation and natural resources.
- O.C.G.A. § 12-13-21: Records obtained pursuant to the Georgia Underground Storage Tank Act.



Statutory Exemptions to ORA

- O.C.G.A. § 15-6-72(c): Certain military service records.
- O.C.G.A. § 15-9-38: Confidentiality of wills.
- O.C.G.A. § 15-11-66.1(e): Positive HIV test results of delinquent or unruly children.
- O.C.G.A. § 15-11-79: Juvenile court records.
- O.C.G.A. § 15-11-79.2(b): Delinquent or unruly children records.
- O.C.G.A. § 15-11-82: Juvenile law enforcement records.
- O.C.G.A. § 15-12-67(b): Deliberations of the grand jury.
- O.C.G.A. § 15-16-10(a)(10): Courthouse security plans.



Statutory Exemptions to ORA

- O.C.G.A. § 34-8-121(a): Department of Labor information.
- O.C.G.A. § 34-8-122(a): Letters to and from the Department of Labor
- O.C.G.A. § 34-9-12(b): Workers Compensation Board records.
- O.C.G.A. § 34-9-61(b): Workers Compensation Board employers' names and employers' reports.
- O.C.G.A. § 34-9-208(f): Workers Compensation rating data.
- O.C.G.A. § 34-9-388(c): Workers Compensation Guaranty Trust Fund reports.
- O.C.G.A. § 34-9-420: Workers Compensation drug test results.



Statutory Exemptions to ORA

- O.C.G.A. § 35-3-34: Access to criminal history records by private entities.
- O.C.G.A. § 35-3-35: Access to criminal history records by government entities.
- O.C.G.A. § 35-3-38: Unauthorized disclosure of criminal history records.
- O.C.G.A. § 35-8-15(b): Peace officer records.
- O.C.G.A. § 36-76-6(d): Cable and video service provider financial information.
- O.C.G.A. § 36-92-4(c): Reports and evaluations of claims adjusters on accidents involving county owned motor vehicles.



Statutory Exemptions to ORA

- O.C.G.A. § 37-1-53: Department of Human Services information received from persons, firms, etc., relating to secret processes, formulas, and methods.
- O.C.G.A. § 37-2-11.2(b): Mental health records.
- O.C.G.A. § 37-3-166(a): Clinical records related to mental illness.
- O.C.G.A. § 37-3-167(d): Court records relating to treatment of mental illness.
- O.C.G.A. § 37-4-125(a): Court records relating to mental retardation.
- O.C.G.A. § 40-2-130(c): Motor vehicle registration records of the Commissioner of Motor Vehicle Safety.
- O.C.G.A. § 40-3-23(d): Motor vehicle records.
- O.C.G.A. § 40-5-2(b): Individual drivers information maintained by the Department of Motor Vehicle Safety.



Statutory Exemptions to ORA

- O.C.G.A. § 43-1-19(h): State examining boards' investigations.
- O.C.G.A. § 43-40-27(d): Real estate misconduct investigation.
- O.C.G.A. § 45-1-4(c): Identity of whistleblowers.
- O.C.G.A. § 45-16-27(c): Documents subpoenaed by coroners and medical examiners.
- O.C.G.A. § 45-16-27(d): Autopsy photographs.
- O.C.G.A. § 45-16-34(b): Documents subpoenaed by coroners.
- O.C.G.A. § 45-18-36(b): Deferred compensation plan information.
- O.C.G.A. § 45-18-53(b): Flexible employee benefit plan information for certain employees.
- O.C.G.A. § 45-20-111(b): State employee drug tests.



Statutory Exemptions to ORA

- O.C.G.A. § 47-1-14: Certain specified records maintained by retirement systems.
- O.C.G.A. § 48-2-15: Information secured by the Revenue Commissioner incident to the administration of any tax.
- O.C.G.A. § 48-7-60(a): Amount of income or particulars disclosed in any report or return.
- O.C.G.A. § 48-7-170: Information obtained by a claimant agency from the Department of Revenue in the context of setoff debt collection.
- O.C.G.A. § 49-5-40(b): Child abuse and deprivation records.
- O.C.G.A. § 49-5-186: Hearings, files and records of Central Child Abuse Registry.



Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(1): Records required by federal government to be kept confidential.
- O.C.G.A. § 50-18-72(a)(2): Medical or veterinary records or similar files, the disclosure of which would invade personal privacy.
- O.C.G.A. § 50-18-72(a)(3): Law enforcement records that would disclose a confidential source or information that would endanger person or property.
- O.C.G.A. § 50-18-72(a)(4): Law enforcement records in any pending investigation or prosecution other than initial police arrest reports, accident reports and incident reports.
- O.C.G.A. § 50-18-72(a)(5): Accident reports.
- O.C.G.A. § 50-18-72(a)(6): Jury list data.
- O.C.G.A. § 50-18-72(a)(7): Employee confidential evaluations.



Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(8): Employee investigations
- O.C.G.A. § 50-18-72(a)(9): Real estate appraisals of property that county has considered purchasing.
- O.C.G.A. § 50-18-72(a)(10): Pending bids and proposals.
- O.C.G.A. § 50-18-72(a)(11): Portions of records that would identify persons applying for or under consideration as an executive head of an agency.
- O.C.G.A. § 50-18-72(a)(12): Records of legislative staff services.
- O.C.G.A. § 50-18-72(a)(13): Records of historical value when the donor has placed restrictions on access.
- O.C.G.A. § 50-18-72(a)(14): Records relating to the location and character of historic properties.



Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(15): Records of farm water use by individual farmers.
- O.C.G.A. § 50-18-72(a)(16): Agricultural or food system records.
- O.C.G.A. § 50-18-72(a)(17): Confidential information, records, or data related to the national animal identification program.
- O.C.G.A. § 50-18-72(a)(18): Records of rare animals' habitats.
- O.C.G.A. § 50-18-72(a)(19): Home address, telephone numbers, security codes, e-mail addresses, and any other data collected by a county in connection with burglar alarms, fire alarms and security systems.
- O.C.G.A. § 50-18-72(a)(19): Home address, telephone numbers, security codes, e-mail addresses, and any other data collected by a county in connection with a neighborhood watch or public safety notification program.



Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(19): Home address, telephone numbers, security codes, e-mail addresses, and any other data collected by a county in connection with a neighborhood watch or public safety notification program.
- O.C.G.A. § 50-18-72(a)(20): Social security numbers, mother's birth name, credit card, debit card, bank account, account or utility account passwords and numbers financial data, insurance and medical records, unlisted telephone numbers, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility television, internet, or telephone accounts held by private customers.
- O.C.G.A. § 50-18-72(a)(21): Records that reveal a 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, password used to access accounts, financial data or information other than compensation by a government agency, unlisted telephone number, and identity of the public employee's immediate family members or dependents.



Statutory Exemptions to ORA

O.C.G.A. § 50-18-72(a)(22): Specified records of the Department of Early Care and Learning.

O.C.G.A. § 50-18-72(a)(23): Electronic signature.

O.C.G.A. § 50-18-72(a)(24): Records acquired for the establishment of a carpooling or ridesharing program.

O.C.G.A. § 50-18-72(a)(25): Records that could compromise public security against acts of sabotage or criminal or terroristic acts.

O.C.G.A. § 50-18-72(a)(26): Name, address and telephone numbers of callers to 9-1-1 call centers.

O.C.G.A. § 50-18-72(a)(27): Records of public recreation programs identifying children 12 years old or younger by name, address and phone number



Horizontal lines for notes

Statutory Exemptions to ORA

O.C.G.A. § 50-18-72(a)(28): Records of the State Road and Tollway Authority which would reveal personal information, financial accounts or travel history of motorists.

O.C.G.A. § 50-18-72(a)(29): Records maintained by public postsecondary educational institutions regarding personal information relating to donors to such institutions or foundations.

O.C.G.A. § 50-18-72(a)(30): Records of MARTA or any transit system that is connected to the TransCard or SmartCard system which would reveal the financial records or travel history of any individual who is a purchaser of either Card or similar fare medium.

O.C.G.A. § 50-18-72(a)(31): Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38.

O.C.G.A. § 50-18-72(a)(32): Physical evidence or investigatory material 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.



Horizontal lines for notes

Statutory Exemptions to ORA

O.C.G.A. § 50-18-72(a)(33): Records that are expressly exempt from public inspection pursuant to O.C.G.A. §§ 47-1-14 and 47-7-127.

O.C.G.A. § 50-18-72(a)(34): Records containing confidential trade secrets.

O.C.G.A. § 50-18-72(a)(35): Records containing data and other proprietary information.

O.C.G.A. § 50-18-72(a)(36): Data developed by faculty at research institutions.

O.C.G.A. § 50-18-72(a)(37): Records not subject to disclosure under 20 U.S.C. Section 1232g.

O.C.G.A. § 50-18-72(a)(38): Records containing public school testing materials.

O.C.G.A. § 50-18-72(a)(39): Records disclosing the identity of research participants.

O.C.G.A. § 50-18-72(a)(40): Records relating to licensing and possession of firearms.



Horizontal lines for notes

Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(41): Communications subject to attorney-client privilege.
- O.C.G.A. § 50-18-72(a)(42): Confidential attorney work product.
- O.C.G.A. § 50-18-72(a)(43): Confidential tax information.
- O.C.G.A. § 50-18-72(a)(44): Computer software used in the operation of a public office.
- O.C.G.A. § 50-18-72(a)(45): Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide self-insurance coverage.
- O.C.G.A. § 50-18-72(a)(46): Specified documents maintained by the Department of Economic Development.



Statutory Exemptions to ORA

- O.C.G.A. § 50-18-72(a)(47): Records relating to training under Article 3 of Chapter 4 of Title 20.
- O.C.G.A. § 50-18-72(c): Trial exhibits.
- O.C.G.A. § 50-27-12(e): Background investigation of applicants to the Georgia Lottery Corporation.
- O.C.G.A. § 50-27-25(a): Information related to the operation of the Georgia Lottery.
- O.C.G.A. § 50-27-54: Prize winner records.
- O.C.G.A. § 50-29-2(a): Geographic Information Systems (GIS) records.



Statutory Exemptions to ORA

- O.C.G.A. § 42-1-7(c): Information regarding communicable diseases of inmates.
- O.C.G.A. § 42-1-11(e): Crime victim notification.
- O.C.G.A. § 42-5-36(a): Information supplied by inmates who cooperate in remedying abuses and wrongdoing in the penal system.
- O.C.G.A. § 42-8-40: Statewide probation records.
- O.C.G.A. § 42-8-106: Records relative to the supervision of probationers by a private agency.
- O.C.G.A. § 42-9-53: Pardons and Paroles Board confidential state secrets.



Cost of Search and Retrieval of Records

The requestor gets to decide whether he or she wants the copies of records or wants to personally inspect the records

Must use the most economical means available to provide the records

Notify the requestor of any costs for search and/or retrieval of the records



Cost Recovery

Search, retrieval and preparation time is reimbursed at the hourly rate of the lowest paid employee capable of performing the task with no charge for the first 15 minutes

10 cents per page for letter and legal size

Actual cost to the county or city for anything else -- include disks, external drives, maps, etc.

Cost recovery for GIS is special

Superior court clerks are allowed to charge more



Cost Recovery

Must notify the requestor of the estimated charge within three days if it will be more than \$25

The county or city can wait for the requestor to agree to pay the estimated cost recovery if it is more than \$25

The county or city can require prepayment if the charge is more than \$500

Practice tip: Put it in writing to make sure that it is clear regardless of the amount



Cost Recovery

County or city can collect an unpaid balance (even if the requestor fails to pick up the records) in the same manner as the county or city can collect any other tax, fee or assessment.

If the requestor fails to pay, then may require them to pay any unpaid balance before beginning a new request



No Cost Recovery

Certain requestors are not required to pay cost recovery when requesting documents for an ongoing administrative, criminal or tax investigation:

- Grand jury
- Counties
- Cities
- Prosecutors
- State government
- Federal government



Deadlines

Within three business days of the request:

- The records must be prepared and released if they are available
- Any exemption that applies to the records must be identified to the requestor
- Must notify the requestor of estimated charges for cost recovery if it will be over \$25



Violations

Civil and criminal

Enforced by:

- The attorney general
- The district attorney or
- Any private person



Criminal Violations

Misdemeanor to:

- Fail or refuse to provide access to records
- Fail or refuse to comply with deadlines
- Frustrating or attempting to frustrate access to records by intentionally making records difficult to obtain

First violation is \$1,000 fine

Second (and subsequent) violation within 12 months is a \$2,500 fine

No arrest prior to trial

Destruction of records to avoid release is up to 24 months in prison



Civil Violations

Negligent failure to provide records

First violation is \$1,000

Second (and subsequent) violation within 12 months is a \$2,500 fine

Plus the possibility of attorneys fees and court costs if you act without substantial justification



Suggestions

Make as many records as possible as easily available as possible

- Website
- Electronic records
- Extra copies of commonly requested documents

Talk to your city or county attorney about compliance with the law

Talk to your city or county manager and/or IT department on ways to make information easier to obtain

Talk to your city or county clerk about your city or county's records retention schedule

Talk to your department head and IT department about how emails are stored



Resources

ACCG: www.accg.org

ACCG's Open Meetings and Open Records Guidebook: <http://www.bpistore.com/accg/GetThumbnail.aspx?assetid=69>

GMA: www.gmanet.com

GMA's Open Meetings and Open Records Guidebook: <http://gmanet.com/Advice-Knowledge/GMA-Publications/Government-in-the-Sunshine-A-Guide-to-Georgia-s-Op.aspx>

Georgia Archives: www.GeorgiaArchives.org

Local Government Retention Schedule: http://www.georgiaarchives.org/records/local_government/


