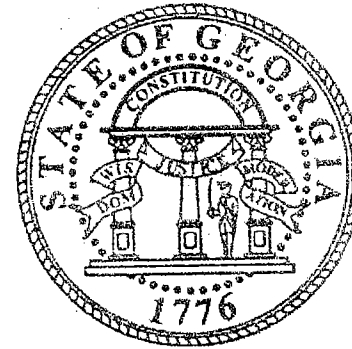


# **GEORGIA LAW ENFORCEMENT AND THE OPEN RECORDS ACT**



## **A Law Enforcement Officer's Guide to Open Records in Georgia**

**Georgia Association of Chiefs of Police  
Georgia Bureau of Investigation  
Georgia Department of Law  
Georgia Department of Public Safety  
Georgia First Amendment Foundation  
Georgia Press Association  
Georgia Public Safety Training Center  
Georgia Sheriff's Association  
Prosecuting Attorney's Council of Georgia**

**First Edition  
2002**



## GEORGIA LAW ENFORCEMENT AND THE OPEN RECORDS ACT

A Law Enforcement Officer's Guide to Open Records in Georgia

*It is indeed my privilege to help provide to the members of Georgia's law enforcement community this valuable guidebook regarding Georgia's "open records" laws. This booklet will provide you with the resources needed to achieve a basic understanding of Georgia's Open Records Act, and will also provide you with guidance regarding some of the most frequent concerns about Open Records Act compliance, especially in the law enforcement context.*

*The Office of the Attorney General has an important role to play regarding all of Georgia's "sunshine laws," including those regarding access to public records. We take these responsibilities very seriously, and the Attorney General has long served as the government's watchdog on the enforcement of open government laws. Georgia has some of the strongest open government laws in the nation, a fact we should all be proud of. I strongly believe that government operates best when it operates openly.*

*As members of the law enforcement community, we must always be vigilant to ensure that the public we are sworn to protect and to serve is also protected in its rights to know what its government is doing. Moreover, it is often the case that law enforcement personnel are the most visible part of "government" that people encounter on a regular basis. It is critical, then, that you be as well informed as possible regarding the laws governing the access of the public to the information that government has.*

*The purpose of this guidebook is to provide a brief, general and non-technical discussion of Georgia's Open Records Act, so that all members of Georgia's law enforcement community can better understand how this law works and how it protects the rights of all of Georgia's citizens to be well informed about their government.*

This booklet was prepared by Gary Theisen of the Georgia Bureau of Investigation, Hollie Manheimer of the Georgia First Amendment Foundation, and was approved by the following groups, each of which has reviewed the subject matter and content. All of these groups encourage law enforcement community members to acquaint themselves with the Georgia Open Records Act and to use this booklet for guidance.

Georgia Association of Chiefs of Police  
Frank Rotondo, Executive Director  
<http://www.gachiefs.com/>

Georgia Bureau of Investigation  
Vernon Keenan, Acting Director  
<http://www.gabnet.org/>

Georgia Department of Law  
Chris Brasher, Senior Assistant Attorney General  
<http://www.law.state.ga.us/>

Georgia Department of Public Safety  
Robert B. Bightower, Commissioner  
<http://www.gadep.org/dps/>

Georgia First Amendment Foundation  
Hollie Manheimer, Executive Director  
<http://www.gfaf.org/>

Georgia Press Association  
Robin Rhodes, Executive Director  
<http://www.gapress.org/>

Georgia Public Safety Training Center  
Georgia Police Academy Division  
Robert Buffington, Director  
<http://www.garc.ga.us/gpsic/>

Georgia Sheriffs Association  
J. Terry Norris, Executive Director  
<http://www.georgiasheriffs.org/>

Prosecuting Attorneys Council of Georgia  
Richard Matton, Executive Director  
<http://www.state.ga.us/pacg/>

*Georgia has a long and proud tradition of encouraging openness for government records. As Chief Justice Charles L. Weltner stated in the case of Davis v. City of Macon: "Public men and women are amenable 'at all times' to the people, they must conduct the public's business out in the open." Open government is not merely a good way for government to operate, it is the only way for it to operate effectively.*

*Access to government records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. As U.S. Supreme Court Justice Louis D. Brandeis once said, "... sunlight is the best disinfectant."*

*The principles of openness in government are found in Georgia's Constitution, in its judicial decisions, and in its laws. The statute that applies to most government records, the "Open Records Act," is found in the Official Code of Georgia Annotated (O.C.G.A.) §§ 50-18-70 through 50-18-76*

*The "starting place" under Georgia law regarding open records is the presumption that all public records are open to the public. Georgia law clearly provides that, except as otherwise specifically provided, "All public records ... 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." O.C.G.A. § 50-18-70(b).*

*This guidebook provides specific reference topics concerning many of the issues in open records compliance that law enforcement encounters on a regular basis. The guidebook also provides ready reference materials in its appendices. Reference is made to these helpful appendices throughout the guidebook. While we have tried to provide you with a comprehensive yet user-friendly resource on open records, no such effort can ever be a substitute for a well-reasoned policy on such an important topic, or for the advice of your legal advisor.*

*I hope that this guidebook will help you in your efforts to better serve our citizens and our communities.*

*Thurbert E. Baker  
Attorney General  
August 2002*

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## I. OVERVIEW OF GEORGIA'S OPEN RECORDS ACT

### A. Purpose of the Open Records Act

The purpose of the Open Records Act is both to encourage public access to information and to foster confidence in government through openness to the public. The intent of the General Assembly was to afford to the public at large a right of access to government records generally, while permitting some narrow categories of information to be withheld where nondisclosure was believed to be in the public interest.

### B. Act applies to all law enforcement records

The starting place for the Open Records Act is that all records prepared and maintained or received in the course of the operation of the agency are presumed to open for public inspection and copying. This applies to all records compiled for law enforcement or prosecution purposes, including, but not limited to:

- Documents
- Maps
- Photographs
- Papers
- Books
- Tapes
- Letters
- Computer records

### C. Exemptions to presumption of access interpreted narrowly

Although all public records are presumed to be subject to inspection and copying, Georgia law provides that under certain circumstances some categories of information may be withheld from public disclosure. The Act itself makes clear that such exemptions to the Open Records Act must be interpreted narrowly. The Act also provides that once exempt information is removed or "redacted" from a record, the rest of the record must be made available for inspection and copying. Two particular exemptions for law enforcement records are:

- (1) an exemption that gives law enforcement the discretion to withhold investigative records (other than initial incident or arrest reports) during a pending investigation or prosecution; and
- (2) an exemption that gives law enforcement the discretion to withhold records that would disclose the identity of a confidential source, the existence of confidential surveillance or investigation, or confidential investigative or prosecution material which would endanger the life or physical safety of any person.

#### **D. Exemptions to access usually permissive, not mandatory**

Most exemptions to the Open Records Act allow law enforcement to withhold certain information from public inspection, but they do not require it. Accordingly, law enforcement may choose to share such exempt information to the public or the news media even though the Act does not require disclosure. A commonplace example of this is the disclosure of the sketch of a suspect during an ongoing investigation.

Some exemptions to the Open Records Act, however, are mandatory and require that law enforcement not release the exempt information. A list of permissive and mandatory exemptions is contained in Appendix 7.

#### **E. Act protects disclosure of information in good faith, punishes willful nondisclosure**

Any agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act shall not be liable in any action on account of having provided access.

However, any person who knowingly or willfully violates the provisions of the Open Records Act by failing or refusing to provide access to records not subject to an exception under the Open Records Act, or by failing or refusing to provide access to records within the time limits set forth in the Open Records Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$100.

#### **F. Act requires an agency to respond and permit access as soon as reasonably possible**

When a record is readily available and subject to the Open Records Act, it should be provided immediately to the party requesting the record. Even when a record is not readily available, an agency must provide access to the record within a reasonable amount of time, not to exceed three business days.

If a record is not subject to disclosure, then the agency must, within a reasonable amount of time not to exceed three business days, specify in writing to the party requesting the record, the specific legal authority exempting the record from disclosure, to include code section, subsection, and paragraph. Alternatively, within that period of three business days, an agency may obtain an order from a superior court staying or refusing

the requested access to the record.

An agency is not required to charge a fee for complying with an Open Records Act request. If it chooses to do so, it may obtain reimbursement for certain reasonable costs, but must first notify the party making the request, prior to fulfilling the request, of the estimated cost of the copying, search, retrieval, and other administrative charges. Such notification is a condition of compliance with the law as well as condition for the assessment of any fee.

## **II. PENDING INVESTIGATIONS/PROSECUTIONS**

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, are not required to be released.

However, 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. The Georgia Supreme Court has narrowly interpreted "pending investigations" as imminent adjudicatory proceedings of finite duration. Thus investigations can not indefinitely be classified as "pending" in order to prevent public release. Records from investigation of cases that are unsolved, but otherwise terminated, are subject to the Act's disclosure requirements.

A prosecution is deemed to be pending until such time as all direct appeals of conviction, including writs of certiorari to the United States Supreme Court, have been exhausted. Habeas Corpus actions are not considered to be part of the direct appeal process.<sup>1</sup>

## **III. TYPES OF RECORDS**

Set forth below is a brief description of the law regarding the inspection and copying of certain types of records. Although most types of records are subject to access, certain specific information contained in the record may not be. For example, the following information on sworn law enforcement records may be redacted from a record otherwise open to public inspection: address, home telephone number and identification of immediate family or dependents.

## A. Accident reports

Georgia Uniform Motor Vehicle Accident Reports are only subject to public disclosure under the Open Records Act upon the receipt of a "written statement of need" by a person(s) or entity entitled to the report. A model "statement of need" is contained in Appendix 2. Examples of those entitled to obtain accident reports include an individual who:

- Has a personal, professional, or business connection with a party to the accident; owns or leases an interest in property allegedly or actually damaged in the accident;
- Was allegedly or actually injured by the accident; was a witness to the accident; the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
- Is a prosecutor or a publicly employed law enforcement officer;
- Is alleged to be liable to another party as a result of the accident;
- Is an attorney stating 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;
- Is gathering information as a representative of a news media organization;
- 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.

Individual driver history compilations and motor vehicle registration information provided by the Georgia Department of Motor Vehicle Safety (DMVS) must be withheld. A driver's day and month of birth also may be withheld. However, information gathered from the accident scene, including drivers' license numbers, tag numbers, and vehicle registration numbers must be disclosed.<sup>2</sup>

## B. Arrest records

Arrest and booking records along with a photograph (mug shot) of an individual are subject to the Act's disclosure requirements.<sup>3</sup>

## C. Autopsy/coroner reports

Autopsy and coroner's reports, except autopsy photographs, are subject to the Act's disclosure requirements.<sup>4</sup>

## D. Case files (investigative records)

1. Records in an active investigation or pending prosecution, other than initial public arrest reports and initial incident reports, are not required to be released. However, an investigation is no longer deemed to be active when investigative activity has ceased or there is no imminent prosecution. A prosecution is no longer deemed to be pending when all direct litigation has become final or otherwise terminated.
2. Records in closed investigations are subject to the Act's disclosure requirements.<sup>5</sup>

## E. Citations

Uniform Traffic Citations (UTC's) are subject to the Act's disclosure requirements.<sup>6</sup>

## F. Crime laboratory reports

Crime laboratory (GBI Division of Forensic Sciences or "DOFS") reports on "closed cases" are subject to the Act's disclosure requirements.<sup>7</sup>

## G. Criminal histories

Georgia Crime Information Center (GCIC) or other state, federal, or international criminal history compilations must be withheld, except for any portion of a history containing Georgia felony convictions, which must be disclosed. But, when a criminal history record is in a closed investigatory case file, it is subject to the Act's disclosure requirements.<sup>8</sup>

## H. Department policies and procedures

Most departmental policies and procedures are subject to the Act's disclosure requirements. However, departmental policies and procedures which contain information that would divulge the identity of confidential informants or investigations, and information that would jeopardize the life or personal safety of any person are not required to be released.<sup>9</sup>

## I. Driving histories/Department of Motor Vehicle Safety records

The Georgia Department of Motor Vehicle Safety (DMVS) is prohibited from releasing driving histories or personal information on individual drivers. However, driving histories that have been incorporated by a law enforcement agency into a closed investigatory case file, are subject to the Act's disclosure requirements.<sup>10</sup>

## J. Electronic surveillance

The "pending investigations/prosecutions" exemption applies to electronic surveillance. This includes attempts, means, methods, results, and even failures, by law enforcement, so long as the investigation and/or prosecution is pending.

State law prohibits any publication of information obtained under an electronic surveillance warrant "other than that necessary and essential to the preparation of and actual prosecution for the crime specified in the warrant."

Federal law also addresses the disclosure of legally intercepted wire, oral and electronic communications. It provides as follows:

- An investigator or other officer who has legally obtained such information may disclose it to another investigator or officer if pursuant to the official duties of both.
- Any person who has legally obtained such information may disclose it while giving testimony under oath in any court proceeding.

However, the contents of intercepted communications that have already become "public information" or part of a public record may be disclosed.<sup>11</sup>

## K. Family violence records

Reports relating to investigations of family violence are not subject to release under the Open Records Act unless an arrest has been made in the incident(s).<sup>12</sup>

## L. In-car camera videotapes

Police in-car camera videotapes in "closed cases" are subject to the Act's disclosure requirements.<sup>13</sup>

## M. Initial incident reports

Initial incident and police arrest reports are subject to the Act's disclosure requirements, regardless of whether they are part of an active investigation. Additionally, any report, whether entitled a "supplemental report," "narrative report," or similar document name that is produced as part of an initial incident report or can be characterized as such, is likewise to be disclosed.<sup>14</sup>

## N. Internal Affairs records

Investigative records of a government agency relating to the suspension, firing, or investigation of complaints against a public employee are subject to the Act's disclosure requirements 10 days after the investigative record is submitted to the agency for action or the investigation is otherwise concluded or terminated.<sup>15</sup>

## O. Jail documents

Sheriffs are required to keep a record of all persons committed to the jail of the county of which he or she is sheriff. This record must contain the name of the person committed, such person's age, sex, race, under what process such person was committed and from what court the process was issued, the crime with which the person was charged, the date of such person's commitment to jail, the day of such person's discharge, under what order such person was discharged, and the court from which the order issued. This record is subject to the Act's disclosure requirements.<sup>16</sup>

#### **P. 911 materials**

911 materials and computer-aided dispatch (CAD) records are subject to the Act's disclosure requirements.<sup>17</sup>

#### **Q. Probation and parole records**

All records relative to the statewide probation system are confidential and exempt from release, even by subpoena or under the Open Records Act, unless declassified by a majority vote of the Board of Corrections. All records relative to the supervision of probationers by private corporations also are exempt from release under the Open Records Act.

All information, both oral and written, received by the members of the State Board of Pardons and Paroles in the performance of their duties also is confidential and exempt from release, even by subpoena or under the Open Records Act, unless declassified by a majority vote of the State Board of Pardons and Parole. However, an alleged parole or probation violator may review the evidence introduced against him at a final hearing on the matter of revocation of parole or conditional release.<sup>18</sup>

#### **R. Photographs**

Photographs in "closed cases" are subject to the Act's disclosure requirements. However, autopsy photographs are not subject to disclosure unless requested by a family member who provides proof of kinship or otherwise provides a written release.<sup>19</sup>

#### **S. Records from other law enforcement agencies**

Records from a government agency that are incorporated into a closed case are subject to the Act's disclosure requirements unless excluded by a specific exemption. For example, certain federal records that are required to be kept confidential, Department of Family and Children Services records relating to child abuse, and/or records from the Department of Corrections are generally not subject to public disclosure.

Because some records or information received from a federal law enforcement agency may be required to be kept confidential, it is advisable to contact the federal law enforcement agency for guidance regarding public disclosure.<sup>20</sup>

### **IV. PERSONNEL RECORDS**

Personnel records of law enforcement personnel are generally subject to public disclosure, but it is permissible to redact:

For any person in the records:

- Social Security number
- Day / month of birth
- Financial information
- Insurance/medical information

For sworn law enforcement officers:

- Address
- Home telephone number
- Identification of immediate family or dependants

In certain circumstances, news agencies, however, may obtain, upon proper request, Social Security numbers and day/month of birth.<sup>21</sup>

The following are examples of personnel records:

#### **A. Applications for employment**

Applications for employment are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>22</sup>

#### **B. Background investigations**

Background investigations are subject to the Act's disclosure requirements with the exception of confidential evaluations, or examinations undertaken in connection with the employee's appointment or hiring.<sup>23</sup>

#### **C. Benefits selections/payroll deductions**

Employee benefits selections and payroll deductions are exempt from release.<sup>24</sup>

#### **D. Birth certificates**

Birth certificates are exempt from release.<sup>25</sup>



### **E. Certificates of training**

Certificates of training and course completion are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>26</sup>

### **F. Commendations**

Commendations are subject to the Act's disclosure requirements. However, information in commendations which may disclose pending investigations or criminal intelligence may be withheld.<sup>27</sup>

### **G. Criminal history background checks**

Criminal history background checks which have been incorporated into a personnel file are subject to the Act's disclosure requirements.<sup>28</sup>

### **H. DD-214s (military discharge forms)**

Military discharge forms (DD-214s) are exempt from release and must not be disclosed pursuant to the Open Records Act until after a period of 50 years has elapsed from the date of its filing.<sup>29</sup>

### **I. Driver's license information**

Driver's license information which has been incorporated into a personnel file is subject to the Act's disclosure requirements.<sup>30</sup>

### **J. Financial records**

Personal financial data (bank account numbers, direct deposit information, etc.) is exempt from release. The salary and other compensation paid to an employee, however, is subject to the Act's disclosure requirements.<sup>31</sup>

### **K. Health insurance records**

Health insurance records are exempt from release.<sup>32</sup>

### **L. Medical records**

Medical records are exempt from release.<sup>33</sup>

### **M. Performance evaluations**

Performance evaluations are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>34</sup>

### **N. Peace Officer Standards and Training certification records**

Georgia Peace Officer Standards and Training (POST) certification records are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>35</sup>

### **O. Reprimands/adverse personnel actions**

Reprimands and adverse personnel actions are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>36</sup>

### **P. Training records**

Training records are subject to the Act's disclosure requirements after redaction of the information cited above.<sup>37</sup>

## **V. JUVENILE RECORDS**

### **A. Public inspection of records generally**

Although interpretations of the law on the right of public access to some juvenile law enforcement records vary, there is agreement that the following juvenile records should be disclosed to the public by law enforcement:

#### **For juveniles age 13 or over:**

- Incident reports, arrest reports, or closed case files involving crimes that are in the exclusive jurisdiction of the Superior Court or that have been transferred to the Superior Court. These crimes include:
  1. Murder
  2. Voluntary manslaughter.
  3. Rape
  4. Aggravated sodomy

5. Aggravated child molestation
  6. Aggravated sexual battery
  7. Armed robbery
- Incident reports, arrest reports, or closed case files involving crimes identified as designated felony acts in the Juvenile Court Code.

**For juveniles age 13 or over:**

1. A second or subsequent charge of possession of a handgun
2. Kidnapping
3. Arson in the first or second degree
4. Aggravated assault
5. Aggravated battery
6. Robbery
7. Battery on a teacher or other school personnel
8. Attempted murder
9. Attempted kidnapping
10. Hijacking a motor vehicle
11. Possession or manufacture of a destructive device

**For any age:**

1. Carrying or possession of weapon near school property
  2. Second or subsequent charge for possession of a hoax explosive device
  3. Drug trafficking
  4. Criminal racketeering
  5. Participation in criminal street gangs
  6. Escape, if juvenile previously adjudicated guilty of a designated felony
  7. Theft of a motor vehicle
- Incident reports, arrest reports, or closed case files that concern a juvenile who has previously been adjudicated delinquent.
  - Incident reports, arrest reports, accident reports or closed case files involving juvenile traffic offenses (unless the offense is transferred by the juvenile court to the delinquency calendar).

- Records relating to charges which a juvenile court adjudicated in open court, or records otherwise authorized for disclosure by a juvenile court.<sup>38</sup>

**B. Juvenile witnesses/victims**

Incident reports, arrest reports and closed investigations where juveniles appear as witnesses or victims should be disclosed. The law does not permit a witness or victim's name to be redacted because of age.

**C. Publication of the name or picture of a juvenile**

Although the Georgia Code states that the news media may not publish "the name or picture of any child under the jurisdiction of the juvenile court for the first time," this code section has been ruled unconstitutional.<sup>39</sup>

**VI. THE OPEN RECORDS PROCESS**

**A. Release of records**

The department's "records custodian" is generally responsible for compliance with the Open Records Act. This individual may be a designated staff person or the agency head.

A written request for open records is not required by law. However, it is advisable to log or attempt to obtain such requests in writing, to eliminate any dispute as to what was requested or when the request was made. A sample Open Records Act request is attached as Appendix 1. A sample model by which to log a verbal Open Records Act request is attached as Appendix 5.

When records are readily available and subject to public access, they must be provided immediately. When this is not the case, the custodian of records is allowed a "reasonable amount of time" to determine whether the requested records are subject to access under the law. In no event shall this time exceed three business days. The records custodian must respond in one of three ways:

1. If the records exist, are available, and subject to public disclosure

under the Open Records Act, the records custodian must permit inspection and copying.

2. If the records exist and are subject to public disclosure but are not available within three business days of the request, a written description of such records and a timetable for their inspection and copying must be provided within the three-day period.
3. If access to a record is denied in whole or in part, the records custodian must provide, in writing, the specific legal authority exempting such record from release.

Appendix 3 includes several sample model responses to Open Records Act requests. Appendix 4 is a flow chart showing how to process an Open Records Act request.

NOTE: Any person who knowingly or willfully violates the provisions of the Open Records Act by failing or refusing to provide access to records not subject to an exception under the Open Records Act, or by failing or refusing to provide access to records within the time limits set forth in the Open Records Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$100.

#### **B. Non-existent records**

If a report, summary, or compilation is not in existence at the time of the request, the records custodian is not required to prepare one in order to respond to the request.

However, if the record already exists and is subject to disclosure, the custodian must permit inspection and copying.<sup>40</sup>

#### **C. Electronic 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 records not requested or records exempt from release.<sup>41</sup>

#### **D. Appropriate charges**

##### **1. Fee notification requirement**

An agency is not required to charge for complying with an Open Records Act request and may waive any charges.

However, if a fee is to be charged, the agency must notify the requester of the estimated costs associated with processing the records within the three day period and prior to fulfilling the request.<sup>42</sup>

##### **2. Optional charges**

An agency may charge a reasonable fee for the administrative costs associated with the search, retrieval, review, copying, reproduction and mailing of public records. However, an agency must provide copies of requested documents "in the most economical means available." For any charge, it is the agency's burden to demonstrate the charge meets this standard.

Agencies may recover copying costs, but must be able to substantiate the per page charge imposed. Unless otherwise specified by state law, an agency may not charge more than 25¢ per page for each copy.

Hourly charges for administrative/clerical tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request. No charge may be made for the first quarter-hour of administrative time.

Where the 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. However, no charges other than those directly attributable to providing access may be charged where the records are made available by electronic means.

The Georgia Supreme Court has held that no fee may be charged when a person seeks only to review records that are routinely subject to public inspection, such as deeds, city ordinances and zoning maps. An agency also may not charge for time its attorneys spend advising whether records should be disclosed.<sup>43</sup>

### 3. Specifically permissible charges in excess of 25¢ per page

The Department of Public Safety may charge a fee of \$5 for each copy of any accident report received and maintained by the agency.<sup>44</sup>

The Georgia Bureau of Investigation may charge an individual a maximum fee of \$20 for a criminal history.<sup>45</sup>

## VII. NEWS MEDIA ACCESS

For the most part, the news media has the same rights of access to information as the public. However, in certain instances, the news media has several additional rights of access.

For example, the news media has access to motor vehicle accident reports if it is gathering information for news reporting.<sup>46</sup> Additionally, the news media has access to individual Social Security numbers and other similar information.<sup>47</sup>

As a general rule, the news media has the right to conduct news gathering activities, free from government interference, on property open to the public and from publicly owned property. Government officials may restrict the news media and public from crime and accident scenes only to the extent necessary to preserve the integrity of a site for investigation purposes, for ingress and egress of emergency vehicles, or other reasons of protecting against damage to persons or property.

Absent a court order, government officials have no right to restrict photographs that may be taken or interviews that witnesses are willing to give to the media. If private property owners object to the presence of the media on their property, law enforcement officers may enforce trespass laws against the journalists. No law enforcement officer or other public official should demand the film, cameras or notes of reporters or photographers.

## VIII. RECORDS RETENTION

The retention of public records is a statutory requirement described in the Georgia Records Act. Public officials have the responsibility to ensure

that records created within their office be retained as long as required by an approved retention schedule. These schedules are created under the direction of the Archives and History Division of the Georgia Secretary of State and with the approval of the State Records Committee.

Local law enforcement agencies that do not have established record retention schedules should adopt the state's public safety retention schedules for specific record categories. State law enforcement agencies may use their own approved retention schedules or those on the statewide schedule.

Questions regarding the use of and creation of retention schedules should be directed to the Records Management Services section of the State Archives of Georgia. They may be reached at (404) 656-2379. Additional information is available at the program's Internet site at <http://www.sos.state.ga.us/archives/rms/grms.htm>

## IX. CONCLUSION

Law enforcement officers should remember that the general rule for open records compliance is one of public disclosure. The Open Records Act mandates that law enforcement records are subject to public inspection and copying unless specific exemptions exist to exclude their release. It is improper for law enforcement officers to circumvent the requirements of the Open Records Act and to restrict public access to these records.

## APPENDIX 1

### Sample Open Records Request

NOTE: If you want to have evidence of the date of delivery, then delivery can be by hand delivery or by certified mail, return receipt requested.

[Requestor's letterhead]

[Date]

[Custodian's name]  
[Agency's name]  
[Street address]  
[City, State, Zip]

To whom it may concern:

Pursuant to the Georgia Open Records Law (O.C.G.A. § 50-18-70 et seq.) (the "Law"), you are hereby requested to make available for review and copying all files, records and other documents in your possessions that refer, reflect or relate to \_\_\_\_\_.

This request includes, but is not limited to, all documents, notes, correspondence and memoranda evidencing \_\_\_\_\_, and all communication and correspondence in whatever tangible medium between \_\_\_\_\_ and among \_\_\_\_\_ and \_\_\_\_\_.

If this request is denied in whole or in part, we ask that you cite in writing the specific statutory exemption upon which you have relied, as required by law. We also ask that you release all separate portions of otherwise exempt material. Please waive any costs associated with this request, or first inform us about such costs as required by Georgia law.

As you know, the Law requires a response by you within three business days of your receipt of this letter and provides sanctions for non-compliance.

Sincerely,

[Your name]  
[Your title]  
[Your fax number]

## APPENDIX 2

### Sample Statement of Need

#### Accident Reports:

Pursuant to O.C.G.A. § 50-18-72a

Date: \_\_\_\_\_

To: Custodian of the Records

From: \_\_\_\_\_

Re: Motor Vehicle Accident Report No. \_\_\_\_\_

- I have a personal, professional, or business relationship with \_\_\_\_\_.
- I own or lease an interest in \_\_\_\_\_.
- I was allegedly or actually injured by the accident which is the subject of this report.
- I was a witness to the accident which is the subject of this report.
- I am the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident which is the subject of this report.
- I am a prosecutor or a publicly employed law enforcement officer.
- I am alleged to be liable to another party as a result of the accident which is the subject of this report.
- I am an attorney and need 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 am a representative for \_\_\_\_\_. I am obtaining access to motor vehicle accident reports for the sole purpose of news gathering for my news media organization.
- I am 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.

\_\_\_\_\_  
Signature

## APPENDIX 3

### Sample Responses to Open Records Requests

#### Sample Response: Records Available

[Agency's letterhead]

September 1, 2002

John Q. Public  
123 Main St.  
Anytown, Ga. 30001

Reference: Complete murder investigation case file  
of Jane Doe

Dear Mr. Public:

The following is in response to your Open Records request, received by the [Department] on August 30, 2002, regarding the above referenced item. A search for the requested information was made and six case volumes have been identified and are available for review. In addition, the [Department] expects to exempt the following information from dissemination:

1. Social Security numbers, month and day of birth [See O.C.G.A. § 50-18-72(a)(11.3)(A)]
2. Any record or related material which identifies any confidential source [See O.C.G.A. § 50-18-72 (a)(3)]

Please contact [Specify name] at [Telephone number] to make arrangements to review the records.

If you wish to retain a copy of the records or would like the records to be sent directly to you, an invoice for the total administrative costs associated with the preparation of the records is enclosed.

Sincerely,

[Respondent's name]  
[Title]

Date of response must be within three business days of when request was received by the department.

The response should include the date the request was received.

List all information that is exempt from dissemination and cite the specific Georgia Law that exempts the information. The list of exemptions must appear in the initial letter sent to the requestor.

## APPENDIX 3

### Sample Responses to Open Records Requests

#### Sample Response: Cost Estimate

[Agency's letterhead]

September 1, 2002

John Q. Public  
123 Main St.  
Anytown, Ga. 30001

Reference: Complete murder investigation case file  
of Jane Doe

Dear Mr. Public:

In response to your Open Records request, received by the [Department] on August 30, 2002, this will acknowledge the availability of the records requested on the above referenced subject. The charge to provide copies of the records is as follows:

2002 ORA Record # G196L	Qty	Cost
Search, retrieval and review of records @ \$24.09/hour	1.0	\$18.07
Photocopying of case file @ \$14.12/hour	0.5	\$7.10
Page(s) @ .25/page	320	\$80.00
Photographs @ \$3/print	20	\$60.00
Other: Videotape @ \$10/copy	1	\$10.00
Mailing costs (estimate)		\$5.00
<b>Total Cost</b>		<b>\$180.17</b>

Payment must be received prior to our mailing the requested documents. The [Department's] FIN is 58-1195856. Please mail a copy of this invoice, along with a check or money order for the full amount and payable to [Department], to:

[Records custodian]  
[Department]  
[Street address]  
[City, State, Zip]

If the invoice is the initial letter, the date of response must be within three business days of when request was received by the department.

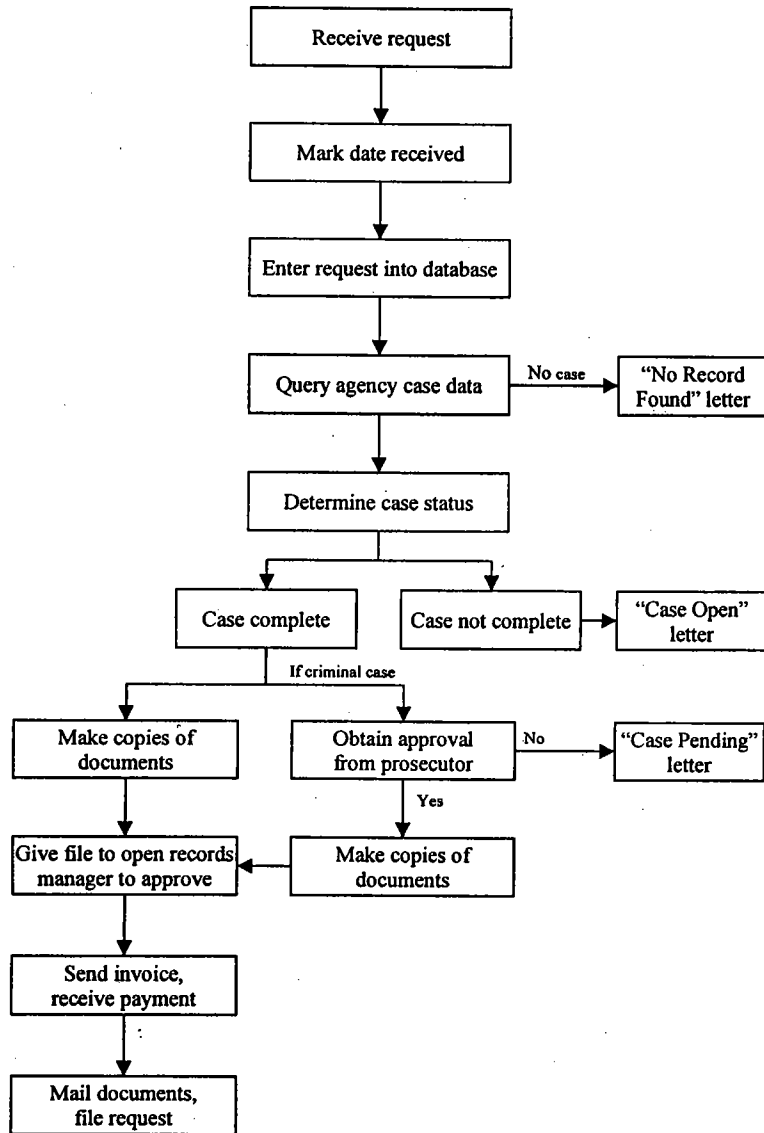
The invoice should be an itemized listing of the charges. Search, retrieval and review may be charged on an hourly basis less the first 15 minutes. The hourly charge may not exceed the salary of the lowest paid full-time employee capable of fulfilling the request. Where no charge is specified in the law for a record, the cost per page may not exceed 25 cents per page. O.C.G.A. § 50-18-71(c)(d)

The method of payment and requirements should come from department policy.

If the invoice is the initial letter of response, be sure to list all information that is exempt from dissemination as depicted in the previous sample.

**APPENDIX 4**

Sample Open Records Request Response Flow Chart



**APPENDIX 5**

Sample Open Records Request Log Sheet

Telephone Request Date: \_\_\_\_\_

Request made in Person Time: \_\_\_\_\_

Requestor Name: \_\_\_\_\_

Requestor Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Requestor Phone: ( \_\_\_\_\_ ) \_\_\_\_\_

Type of Records Requested: \_\_\_\_\_  
 \_\_\_\_\_

Name of Individual (victim/suspect): \_\_\_\_\_  
 \_\_\_\_\_

Date of Incident: \_\_\_\_\_

County where occurred: \_\_\_\_\_

Case Number (if available): \_\_\_\_\_

Other information: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Prepared By: \_\_\_\_\_  
 Department Employee

## APPENDIX 6

### Sample Open Records Cost Worksheet

This worksheet can be used to determine cost estimates or serve as an invoice or receipt.

[AGENCY NAME] OPEN RECORDS COST WORKSHEET		
<p>The following are the actual costs incurred in complying with the request to copy [Agency] records pursuant to O.C.G.A. § 50-18-70. (There is no charge for the first quarter hour of time expended in record preparation.) The Open Records Act allows an agency to waive all fees should it so choose. The Act also authorizes an agency to charge up to 25¢ per page, provided that it uses the most economical means of copying reasonably available. There is no charge for simple inspection of records that are routinely subject to public disclosure. No fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means.</p>		
_____ Number of hours of search, retrieval & review		
- .25 (First 15 minutes - No charge)		
_____ Total hours of preparation	× [hourly rate]*	= \$
_____ Number of hours copying	× [hourly rate]*	= \$
_____ Number of pages	× [copy rate]**	= \$
	<b>SUB TOTAL</b>	<b>= \$</b>
<i>The following additional costs may be applicable ...</i>		
_____ Number of copies of audio tapes	× [cost per copy]	= \$
_____ Number of copies of video tapes	× [cost per copy]	= \$
_____ Number of copies of photographs	× [cost per copy]	= \$
_____ Number of CD-ROM's with digital photographs	× [cost per CD-ROM]	= \$
Other agency cost (specify)	+ [actual cost]	= \$
Postage	+ [actual cost]	= \$
	<b>GRAND TOTAL</b>	<b>= \$</b>
Case number/Description of records:		
Preparer's name:		Date: / /
Amount received: \$	Date: / /	Received by: Signature

\* Hourly rate: The hourly charge for administrative/clerical tasks may 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.

\*\* Copy rate: An agency may not charge more than 25¢ per page for each copy.

## APPENDIX 7

### Information Exempt from Public Disclosure

Public disclosure is not required for certain records and information. The following is a list of records and information exempt from release and the corresponding legal authority. Any agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act shall not be liable in any action on account of having provided access.

**\*\* Before relying on an exemption, you must assure yourself that it applies \*\***

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
AIDS/HIV information	50-18-72(a)(2), 31-22-9.1(a)(2), 24-9-47(b)	Mandatory
Autopsy photographs (unless from family member with proof of kinship)	45-16-27(d)	Mandatory
Background investigations of applicants to the Lottery Corporation	50-27-12(e)	Mandatory
Birth certificates	31-10-25(a)	Mandatory
Burglar/fire alarm information	50-18-72 (a)(11.2)	Discretionary
Carpooling information	50-18-72(a)(14)	Discretionary
Confidential informants	50-18-72(a)(3)	Discretionary
Credit report	15 U.S.C. 1681b(a)(4)(D)	Mandatory
Confidential evaluations or examinations in connection with new appointments or hires	50-18-72(a)(5)	Discretionary



## APPENDIX 7

### Information Exempt from Public Disclosure

**\*\* Before relying on an exemption, you must assure yourself that it applies \*\***

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Confidential records concerning reports of child abuse	49-5-40(b), but disclosure may be required by juvenile court order under 49-5-41(b) or by law if child is deceased pursuant to 49-5-41(c)	Mandatory
Confidential grand jury testimony	Federal Rule Criminal Procedure 6(e), Kessler v. State, 249 Ga. 462, 474 (1982)	Mandatory
Criminal history records other than in-Georgia felony convictions	35-3-34(a) (1)(A), 35-3-34(d.1), 35-3-38, 28 U.S.C. § 534 (NCIC record) (but see Chapter III(G) of this manual regarding disclosure when in closed case file and Chapter IV(G) when in a personnel file)	Mandatory
Deferred compensation salary deductions	45-18-36(b)	Mandatory
Department of Corrections (classified inmate files)	42-5-36(c)	Mandatory
Department of Corrections (classified investigative reports and intelligence data prepared by Internal Affairs)	42-5-36(b)	Mandatory
Department of Human Resources clinical records	37-3-166(a)	Mandatory
Driver's license information to the extent it is obtained from Department of Motor Vehicle Safety	40-5-2(b)	Mandatory

## APPENDIX 7

### Information Exempt from Public Disclosure

**\*\* Before relying on an exemption, you must assure yourself that it applies \*\***

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Federal records required by the federal government to be kept confidential	50-18-72(a)(1), but see Georgia Hospital Association v. Ledbetter, 260 Ga. 477 (1990) (no requirement "that a report generated by or used by the state for state purposes be exempted from disclosure merely because the report would be kept confidential if generated or used by the federal government.")	Mandatory
Flexible employee benefit plan	45-18-53(b)	Mandatory
Home address, home telephone number, social security number, and insurance or medical information of teachers and employees of a public school	50-18-72(a)(13.1)	Discretionary
Home address, home telephone number, social security number, and insurance or medical information of law enforcement, judges, crime lab scientists and correctional officers	50-18-72(a)(13)	Discretionary
Information received from an insurance company investigating a fire loss of real or personal property	25-2-33(d)	Mandatory, but review statute
Information, the disclosure of which would constitute an actionable invasion of privacy	50-18-72(a)(2); Harris v. Cox Enterprises, 256 Ga. 299 (1986); Athens Observer v. Anderson, 245 Ga. 63 (1980) ("where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one's legal right of privacy")	Mandatory

## APPENDIX 7

### Information Exempt from Public Disclosure

**\*\* Before relying on an exemption, you must assure yourself that it applies \*\***

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Confidential juvenile records	15-11-82(b), but see Chapter V of this manual for list of crimes for which disclosure is required	Mandatory
Medical records	50-18-72(a)(2), (11.3)	Mandatory
Military discharge (DD-214)	15-6-72(c)(1)	Mandatory
Name/ID of rape victim	Doe v. Board of Regents of the University System of Georgia, 215 Ga. App. 684 (1994)	Mandatory, but see Dye v. Wallace, 274 Ga. 257, n.1 (2001).
Open investigation/pending prosecution	50-18-72(a)(4)	Discretionary
Pardons and Parole Board (classified records)	42-9-53(c)	Mandatory
Probation records (classified records)	42-8-40	Mandatory

## APPENDIX 7

### Information Exempt from Public Disclosure

**\*\* Before relying on an exemption, you must assure yourself that it applies \*\***

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Social Security numbers and insurance or medical information contained in personnel records	50-18-72(a)(11.1)	Discretionary
Social Security number, mother's maiden name, day and month of birth, and credit, bank account, insurance and medical information	50-18-72(a)(11.3)(A)	Mandatory, but see media exception Chapter IV of this manual.
Confidential surveillance/investigation	50-18-72(a)(3)	Discretionary
Confidential tax information	48-7-60(a), 48-7-61(a)(b)(c), Bowers v. Shelton, 265 Ga. 247 (1995)	Mandatory, but see 40-7-31.1
Vehicle tag number and registration to the extent it is obtained from the Department of Motor Vehicle Safety	40-2-130(c)	Mandatory
Whistleblower's identity (public employee issuing a complaint or providing information concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations)	45-1-4 (c)	Mandatory
Wiretap (technical data)	16-11-64(b)(8), 50-18-72(a)(3)	Mandatory
Wiretap (records/documents of)	16-11-64(b)(8)	Mandatory

## ENDNOTES

### A Law Enforcement Officer's Guide to Open Records in Georgia

1. See O.C.G.A. § 50-18-72(a)(4); *Parker v. Lee*, 259 Ga. 195 (1989); *Napper v. Georgia Television*, 257 Ga. 156 (1987).
2. See O.C.G.A. §§ 50-18-72(a)(4.1), 40-2-130(c).
3. See O.C.G.A. §§ 17-4-27, 50-18-72(a)(4); *Lebis v. State*, 212 Ga. App. 481 (1994).
4. See *Kilgore v. R.W. Page Corp.*, 259 Ga. 556 (1989).
5. See O.C.G.A. § 50-18-72(a)(4); *Lebis v. State*, 212 Ga. App. 481 (1994).
6. See *Waller v. The State*, 231 Ga. App. 323 (1998) (UTC as a court record).
7. See O.C.G.A. § 50-18-72(a)(4).
8. See O.C.G.A. §§ 35-3-34 (a)(1)(A), 35-3-34(d.1); *Napper v. Georgia Television*, 257 Ga. 156 (1987).
9. See O.C.G.A. § 50-18-72(a)(3).
10. See O.C.G.A. §§ 40-5-2(b), 50-18-72(a)(4), (4.1); *Napper v. Georgia Television*, 257 Ga. 156 (1987).
11. See O.C.G.A. §§ 16-11-62, 16-11-64; 18 U.S.C. § 2517; U.S. Senate Judiciary Committee report on Title III; Sen. Rpt. No. 1097, 90th Cong., 2d Sess. at 93, reprinted in 1968 US Code, Cong. & Admin News, 2112, 2118.
12. See O.C.G.A. §§ 17-4-20.1(d), 49-5-41(e).
13. See O.C.G.A. § 50-18-72(a)(4).
14. See O.C.G.A. §§ 40-5-2(b), 50-18-72(a)(4); *Napper v. Georgia Television*, 257 Ga. 156 (1987), See also *Atlanta Journal and Constitution, et al. v. City of Brunswick, et al.*, 265 Ga. 413 (1995).
15. See O.C.G.A. § 50-18-72(a)(5); *Fincher v. State*, 231 Ga. App. 49 (1998).
16. See O.C.G.A. § 42-4-7.
17. See *Robert Allen v. Athens-Clarke County et al*, Superior Court of Athens-Clarke County, Case No.: SU-99-CV-1112-J (Aug. 2, 1999) ("911 tapes and CAD transcripts are not exempted by exception (a)(4)); *The Bainbridge Post Searchlight, Inc. v. Decatur County, Georgia et al.*, Case No. 96-V-302 (Sept. 10, 1996) ("911 incident cards are public records").
18. See O.C.G.A. §§ 42-8-40, 42-8-106, 42-9-53.

## ENDNOTES

### A Law Enforcement Officer's Guide to Open Records in Georgia

19. See O.C.G.A. § 45-16-27(d).
20. See O.C.G.A. § 50-18-72(a)(1); *Napper v. Georgia Television*, 887 F2d. 1528 (11th Cir. 1989).
21. See *Hackworth v. Board of Education*, 214 Ga. App. 17 (1994) ("Given that the legislature was aware of the language of the federal statute and yet chose to omit personnel records from the Georgia exemption... we conclude it was not the intent of the legislature to create a "blanket" exclusion for personnel records."); O.C.G.A. § 50-17-72(11.3)(A). Consult with your legal advisor as to the applicability of the news media exemption to sworn law enforcement officer's data.
22. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
23. See O.C.G.A. § 50-18-72(a)(5).
24. See O.C.G.A. § 45-18-53(b).
25. See O.C.G.A. § 31-10-25.
26. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
27. See O.C.G.A. § 50-18-72(a)(4); 28 CFR § 23.20(f)(1).
28. See O.C.G.A. §§ 35-3-34 (a)(1)(A), 35-3-34(d.1); *Napper v. Georgia Television*, 257 Ga. 156 (1987).
29. See O.C.G.A. § 15-6-72(c)(1).
30. See *Napper v. Georgia Television*, 257 Ga. 156 (1987).
31. See O.C.G.A. § 50-18-72(a)(11.3)(A).
32. See O.C.G.A. § 50-18-72(a)(11.3)(A).
33. See O.C.G.A. §§ 50-18-72(a)(2), 50-18-72(a)(11.3)(A), 50-18-72(13).
34. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
35. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
36. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
37. See O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).
38. See generally O.C.G.A. §§ 15-11-83, 15-11-82, 15-11-79, 15-11-78, 15-11-73, 15-11-63, 15-11-28.

## ENDNOTES

### A Law Enforcement Officer's Guide to Open Records in Georgia

39. See generally O.C.G.A. §§ 15-11-83(g)(1); Florida Publishing Co. v. Morgan, 253 Ga. (1984); Op. Att'y Gen. 80-11.
40. See O.C.G.A §§ 50-18-70(d),(f), 50-18-72(h).
41. See O.C.G.A § 50-18-70(g).
42. See O.C.G.A § 50-18-71.2.
43. See O.C.G.A §§ 50-18-71(a)-(f), 50-18-71.2; McFrugal Rental of Riverdale v. Garr, 262 Ga. 369 (1992).
44. See O.C.G.A. § 40-9-30.
45. See O.C.G.A. § 35-3-34(d.3).
46. See O.C.G.A. § 50-18-72(a)(4.1).
47. See O.C.G.A. § 50-18-72(a)(11.3)(A).

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For further information about this project, please contact the Georgia Bureau of Investigation at (404) 244-2504 or the Georgia First Amendment Foundation at (404) 525-3646.