SB237
198002-1
By Senator Ward
RFD: Governmental Affairs
First Read: 04-APR-19
SYNOPSIS: This bill would establish the Alabama Open Records Act, and would provide a process to provide citizens with better access to public records.

This bill would provide procedures for making and responding to requests for access to public records, and would set the fees to be charged for copies.

This bill would create the Office of the Public Access Counselor in the Department of Examiners of Public Accounts, and would provide for the appointment of the Public Access Counselor, and would provide for his or her powers and duties.

This bill would establish an appeals process and administrative and judicial remedies, and would provide civil penalties for noncompliance.

A BILL
TO BE ENTITLED
AN ACT
Relating to public records; to establish the Alabama
Open Records Act; to provide a process for access to public
records; to provide procedures for making and responding to
requests for access; to establish fees; to create the Office
of the Public Access Counselor in the Department of Examiners
of Public Accounts; to provide for his or her appointment,
powers, and duties; to establish an appeals process and
provide administrative and judicial remedies; to provide civil
penalties for noncompliance; and to repeal Section 36-12-40,

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited
as the Alabama Open Records Act.

Section 2. The Legislature finds and declares all of
the following:

(1) All political power is inherent in the people.

(2) It is the public policy of the state that every
person is vested with the inherent right to know and be fully
informed about the workings of government.

(3) Governmental agencies must ensure and facilitate
the public's right of access to and review of public records
so that they may efficiently and intelligently exercise their
inherent political power.

(4) All state, county, and municipal records not
expressly exempt by state or federal law should be open for
public inspection. The duty of all governmental agencies and
political subdivisions of the state to provide access to
public records should be broadly construed.

(5) The Alabama Open Records Act should not create,
directly or indirectly, any rights of privacy or any remedies
for violation of any rights of privacy; nor should the Alabama
Open Records Act, except as the act specifically provides,
establish any procedures for protecting any person from
release of information contained in public records.

(6) The purpose of this act is also to protect and
preserve government records belonging to and being property of
the state.

(7) The privacy interests of individuals are
adequately protected in the specific exceptions to the Alabama
Open Records Act or in the statutes which authorize, create,
or require the records.

(8) Except as may be exempted by or required by
state or federal law directly pertaining to a particular
record or governmental body, governmental bodies should follow
the procedures required by the Alabama Open Records Act.

Section 3. For the purposes of this act,
the following terms shall have the following meanings:

(1) COUNSELOR. The Public Access Counselor appointed
pursuant to this act.

(2) CUSTODIAN. A person designated by a governmental
agency to maintain actual possession, custody, or control of
government records and who has been given the expressed,
IMPLIED, or apparent authority from the governmental body or a
governmental official to grant or deny a request for access to a government record. If a governmental body has not designated a custodian pursuant to this act, the custodian shall be the governmental official or employee having ultimate executive responsibility for any governmental body that has possession, custody, or control of government records.

(3) ELECTRONIC. Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) GOVERNMENTAL BODY or AGENCY or PUBLIC BODY or AGENCY. All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds, all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties or municipalities, all quasi-judicial bodies of the executive and legislative departments of the state, and all standing, special, or advisory committees or subcommittees of, or appointments by, the body. This term does not include any of the following:

a. A legislative party caucus or coalition.
b. A state appellate or trial court, except as required by the Constitution of Alabama of 1901, or any organization governed by the rules of the Alabama Supreme Court.

c. A voluntary membership association comprised of public employees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or the Governor.

(5) GOVERNMENTAL EMPLOYEE or PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal levels of government or their instrumentalities, including governmental corporations and authorities, who is paid in whole or in part from state, county, or municipal funds.

(6) GOVERNMENTAL OFFICIAL or PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at the state, county, or municipal level of government, or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government, or their instrumentalities, including governmental corporations.

(7) GOVERNMENTAL RECORD. Any record received by a governmental official or employee, or made by those persons, while using government space or equipment.
(8) PERSON. Any private individual, for-profit, or non-profit business, governmental body, trust, estate, or similar entity.

(9) PRIVATE BUSINESS. A proprietorship, corporation, partnership, company, or other entity which conducts any type of legal trade or business in the state which is not a governmental body.

(10) PRIVATE INDIVIDUAL. A natural person who is not a governmental official or governmental employee.

(11) PUBLIC RECORD. Any of the following:
   a. A record made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency, including a record that is reasonably necessary to record the business of government and which is not subject to a statutory exemption from disclosure under state law or prevented from disclosure by an applicable federal law.
   b. A record received by, or maintained on behalf of, a private individual or private business from a governmental agency, governmental employee, or governmental official that is not otherwise subject to a statutory exemption from disclosure under state law or prevented from disclosure by an applicable federal law.

(12) RECORD. Information inscribed on a tangible medium that is stored in an electronic or other medium and is retrievable in perceivable form, including all documents, papers, electronic mail, letters, maps, books, tapes, images,
videos, films, audio recordings, or other material, regardless
of the physical form, characteristics, or means of
transmission.

(13) REDACT. To obscure, cover, or remove text or
information from a record prior to publication or release.

(14) REQUESTOR. A person who has made an oral or
written request to see a record to the custodian of that
record pursuant to this act.

Section 4. (a) A person has the right to inspect and
take a copy of a public record upon request made in accordance
with Section 5.

(b) Each governmental body is required to adopt
rules regarding its compliance with the Alabama Open Records
Act and shall designate a custodian of records.

(c)(1) A custodian shall allow a requestor to
inspect and take a copy of any public record in accordance
with Section 5.

(2) A copy of a public record shall be produced to
the requestor in the most economical method possible.

(3) When hard copies of responsive records are
produced, the custodian shall mail the records to the
requestor upon prepayment of postage.

(d) A custodian shall take all necessary precautions
for the preservation and safekeeping of governmental records.

Section 5. (a)(1) Public records shall be open to
inspection and copying by any person during the regular office
hours of the custodian of the public records.
(2) The custodian may require the requestor to provide his or her name, and if relevant, an address to where records are to be sent.

(b)(1) A request for public records shall identify the requested records with reasonable specificity.

(2) The request need not make reference to this act in order to invoke the authority of this act or to impose the time limits for response by the custodian.

(3) The request need not be in writing, but in the event of an administrative or judicial challenge of the sufficiency of the response to the request, the requestor shall bear the burden of proof as to the fact that the request was made and as to the date and content of the request.

(4) A request may be made on a form as provided in Section 8.

(5) The requestor may submit the request by mail or electronic means.

(c) A custodian of governmental records, as soon as is practicable, but in all cases within five working days of receiving a request, shall take one of the following actions:

(1) Provide the requested records.

(2) a. Deny access to the requested records because release of the requested records is prohibited by law.

   b. The denial response shall meet all of the following requirements:

      1. Be in writing on a form as provided in Section 8.
2. Identify with reasonable particularity the volume and subject matter of withheld records.

3. Cite, as to each category of withheld records, the specific state or federal law, which authorizes the withholding of the records.

   (3)a. Provide in part the requested record and redact the record in part because the release of part of the record is prohibited by law.

   b. When access to a portion of a requested record is withheld, the custodian may redact only that portion of the record to which an exemption applies and shall release the remainder of the record.

   c. The response to deny access to a part of the record shall meet all of the following requirements:

      1. Be in writing on a form as provided in Section 8.

      2. Identify with reasonable particularity the subject matter of the redacted portions.

      3. Cite, as to each category of redacted records, the specific state or federal law which authorizes the redaction of the records.

   (4)a. Specify that it is not practically possible to provide the requested records or to determine whether they are available within the five-workday period.

   b. This response shall be in writing and specify the conditions that make providing the requested records impossible within five working days.
c. It is permissible for the custodian to provide responsive records as they are compiled and become available.

d. If a response is made within five working days, the custodian shall have an additional seven working days in which to provide a response in accordance with this subsection.

(5) Certify that the requested record does not exist.

(6) Certify that the requested record is not within the possession, custody, or control of the custodian to whom the request was directed, and if known, identify the proper custodian of the requested record.

(d)(1) A custodian or governmental body may petition the counselor or any circuit court appropriate for the filing of a civil action pursuant to Section 10 for additional time to respond to a request for records when the request is for an extraordinarily large volume of records and a response within the time required by this act will prevent the custodian from meeting his or her operational responsibilities.

(2) Before proceeding with the petition, the custodian or governmental body shall make reasonable efforts to reach an agreement with the requestor concerning the production of the records requested.

(e)(1) Subject to subsection (e) of Section 7, a custodian or governmental body may not be required to create a new record if the record does not already exist.
(2) A custodian or governmental body may abstract or summarize information under the terms and conditions as agreed between the requestor and the custodian or governmental body.

(f) Failure by a custodian or governmental body to respond in the time limit specified under this act for records shall be deemed a denial of the request and shall constitute a violation of this act.

(g)(1) Public records received or maintained by a private individual or private business in the performance of a service or function for or on behalf of a governmental body shall be subject to disclosure from the custodian of the governmental body to the same extent that the records would be subject to disclosure if received, possessed, or maintained by the custodian.

(2) Private individuals having possession of public records in the performance of a service or function for or on behalf of a governmental body which are not in the actual possession of the custodian responsible for the records shall immediately provide the records to the custodian upon request of the custodian.

(h)(1) Each governmental body shall adopt and publish or post procedures consistent with this section to be followed in responding to requests for access to inspect and copy public records.

(2) The procedures shall provide full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the essential
functions of the governmental body, provide assistance and
information upon request, and insure efficient and timely
action in response to requests for inspection of public
records.

(i) Each governmental body having possession,
custody, or control of a public record shall designate the
persons as necessary to carry out the duties of custodian
under this act and shall ensure that a custodian, or his or
her designee, is available during regular business hours of
the governmental body to carry out the duties.

(j) Each governmental body shall provide, upon
request of any person, all of the following information:

(1) The principal office of the governmental body
and its regular office hours.

(2) The title and address of the custodian of the
records of the governmental body and of any other governmental
employee who is ordinarily available to act on requests made
at the location where public records can be viewed.

(3) The fees, if any, charged for access to or
copies of the public records of the governmental body.

(4)a. The written procedures to be followed in
requesting access to and obtaining copies of the public
records of the governmental body.

b. The procedures cannot limit requests for public
records to those made in person.

c. The procedures shall be easily accessible to the
public on the official website of the governmental body and at
Section 6. (a)(1) A person may view a public record at no charge.

(2) For the protection of original government records, custodians may provide copies of public records for review by persons at no charge or impose restrictions on the ability of persons to handle or damage original government records.

(3) A person may not be prohibited from using his or her own equipment to photograph, electronically scan, or make copies of public records at his or her own expense unless the arrangements could reasonably be expected to cause damage to original government records.

(4) A custodian shall be authorized and encouraged to provide copies of public records for a person requesting them without charge.

(b)(1) A custodian or governmental body may make reasonable charges, not to exceed the actual cost, incurred in accessing, duplicating, or supplying requested records.

(2) No custodian or governmental body may impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs or overhead associated with creating or maintaining government records or transacting the general business of the custodian or governmental body upon a person requesting public records.
(c)(1) Any duplicating fee charged by a custodian or governmental body may not exceed the actual cost of duplication.

(2) A per page charge of ten cents ($0.10) or less for copying non-electronic records sized eight and one-half inches by 11 inches or eight and one-half inches by 14 inches in a black and white format shall be considered prima facie reasonable unless the requestor can provide substantial evidence that the actual cost was more than five cents ($0.05) less than the amount charged.

(3) A custodian may charge up to fifteen cents ($0.15) per page for two-sided copies.

(4) A per page charge of fifty cents ($0.50) or less for copying non-electronic records sized eight and one-half inches by 11 inches or eight and one-half inches by 14 inches in a color format shall be considered prima facie reasonable unless the requestor can provide substantial evidence that the actual cost per page was more than twenty cents ($0.20) less than the amount charged.

(d)(1) A custodian or governmental body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request.

(2) The charges may not exceed the actual cost to the custodian or governmental body in supplying the records, except that the custodian or governmental body may charge, on
a pro rata per acre basis, for the cost of creating
topographical maps developed by the custodian or governmental
body, for the maps or portions thereof, which encompass a
contiguous area greater than 50 acres.

(e)(1) If the charge for copies of public records
will exceed the per page charges which are prima facie
reasonable as set forth in subsection (c), then the charge for
supplying the requested records shall be estimated by the
custodian and communicated to the requestor no later than 24
hours in advance of the deadline for the custodian to respond
to the request.

(2) If the estimation is not communicated as
required, the custodian may not charge more than the charges
set forth in subsection (c).

(f)(1) In any case where a custodian or governmental
body determines in advance that charges for producing the
requested records are likely to exceed two hundred dollars
($200), the custodian or governmental body, before continuing
to process the request, may require the requestor to agree to
payment of a deposit not to exceed the amount of the advance
determination.

(2) The deposit shall be credited toward the final
cost of supplying the requested records.

(3) The period within which the custodian or
governmental body shall respond under this subsection shall be
tolled for the amount of time that elapses between notice of
the advance determination and the response of the requestor.
(g) Before processing a request for records, a custodian or governmental body may require the requestor to pay any amounts owed to the custodian or governmental body for previous requests for records that remain unpaid 30 days or more after billing.

(h) Unless otherwise expressly authorized by law, when requested to provide a certified copy of a public record, a governmental agency may charge up to one dollar ($1) per copy for the first 10 pages, fifty cents ($0.50) for the next 90 pages of the same record, and twenty-five cents ($0.25) for any additional certified copies of the same record.

Section 7. (a)(1) Public records maintained by a custodian or governmental body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requestor at a reasonable cost, not to exceed the actual cost in accordance with subsection (c) of Section 6.

(2) If the records are produced in electronic format, then the cost shall not exceed one cent ($0.01) per page.

(b)(1) A custodian or governmental body shall produce public records maintained in an electronic database in any tangible medium identified by the requestor, which may include, where the custodian or governmental body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requestor, if that medium is used by the
custodian or governmental body in the regular course of
business.

(2) A custodian or governmental body may not be
required to produce records from an electronic database in a
format not regularly used by the custodian or governmental
body.

(3) Disclosure pursuant to subdivision (2) shall be
produced in the native format of the records.

(c) The custodian or governmental body shall make
reasonable efforts to provide records in any format under the
terms and conditions as agreed with the requestor, including
the payment of reasonable costs.

(d) The running of a query or excision of exempt
fields of information from a database or the conversion of
data from one available format to another may not be
considered the creation, preparation, or compilation of a new
public record.

(e)(1) Every governmental body shall compile and
annually update a database index, which is an index of
computer databases, that at a minimum, contains those
databases created by the governmental body on or after July 1,
1997.

(2) The database index shall be a public record, and
at a minimum, shall include all of the following information
with respect to each database listed therein:

a. A list of data fields.

b. A description of the format or record layout.
c. The date last updated.

d. A list of any data fields to which public access is restricted.

e. A description of each format in which the database can be copied or reproduced using the computer facilities of the public body.

f. A schedule of fees for the production of copies in each available form.

g. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the State Records Commission in consultation with the Director of the Alabama Public Library Service and the Director of the Department of Archives and History.

(3) A custodian or governmental body may not be required to disclose its software security, including passwords.

(4) For the purposes of this subsection, computer database means a structured collection of data or records residing in a computer.

(f) When designing or acquiring an electronic record keeping system, a governmental agency shall consider whether the system is capable of providing data in some common format, including, but not limited to, portable data format, comma separated values, or the American Standard Code for Information Interchange.

(g) A governmental agency may not enter into a contract for the creation or maintenance of a public records
database if that contract impairs the ability of the public to inspect or copy public records of the agency.

(h) Subject to restrictions of copyright and trade secret laws and public records exemptions to disclosure, agency use of proprietary software may not diminish the right of the public to inspect and copy a public record.

Section 8. (a) A governmental body shall make available online and upon written or oral request a sample records request form in substantially the following format:

SAMPLE RECORDS REQUEST FORM

Date of Request: _________________
___ Copy Requested
___ Record To Be Reviewed On Site
Public Body/Agency/Department __________
Requestor Information:
Name: __________________________
Address: ________________________
Phone: _________________________
Email: _________________________
Preferred Contact Method: ___________
Preferred Delivery Method: ___________
List of Records Requested:
Optional: Any additional information you may wish to provide that might expedite this process (case number, code section):
____________________________________________________________________________________
____________________________________________________________________________________
(b) A public body shall utilize a sample records response form in substantially the following format:

SAMPLE RECORDS RESPONSE FORM

Name of Requestor: ____________________________

Date of Request: ______________________________

Record Requested: ____________________________

Date of Determination/Response: ________________

METHOD OF REQUEST:

___ In Person

___ Email

___ Mail

___ Phone

___ Fax

METHOD OF RESPONSE:

___ In Person

___ Email

___ Phone

___ Fax

The office of ________________________ makes the following determination/response to the above referenced records request:
___ The record is provided to the requestor.
___ The record is entirely withheld because the
release of the records is prohibited by law. Responder must
cite specific code section as to each category of withheld
record.
___ The record is provided in part and withheld in
part because the release of part of the record is prohibited
by law. Responder must cite specific code section as to each
category of withheld record.
___ It is not practically possible to provide the
requested records or to determine whether the records are
available within the five-workday period. Responder must cite
conditions that make response impossible. If response is made
within five working days, the public body will have an
additional seven days in which to provide one of the three
preceding responses.
___ I certify that the requested record does not
exist.
___ I certify that I do not have possession,
custody, or control over the requested record.

Determination/Response made by:
Print Name and Title: ______________________
Signature: _______________________________

Section 9. (a) There shall be an Office of Public
Access Counselor established in the Department of Examiners of
Public Accounts.
(1) The office shall be administered by the
counselor.

(2) The Department of Examiners of Public Accounts
shall designate a person to serve as the counselor at a salary
to be fixed by the Chief Examiner.

(b) The counselor shall have all of the following
powers and duties:

(1) To conduct research.

(2) To prepare interpretive and educational
materials and programs in cooperation with the Office of the
Attorney General.

(3) To distribute to newly elected or appointed
public officials the Alabama Open Records Act and educational
materials concerning the act.

(4) To respond to informal inquiries made by
requestors by telephone, in writing, in person, by facsimile,
or by electronic mail concerning the Alabama Open Records Act.

(5) To grant or deny requests from custodians for
extensions of time to respond to a request for records
pursuant to subsection (d) of Section 5.

(6)a. To issue advisory opinions to interpret the
Alabama Open Records Act upon the request of a requestor of
records.

b. The counselor shall confer with the Attorney
General prior to issuance of any advisory opinions about the
requests, but the counselor may not issue an advisory opinion
concerning a specific matter with respect to which an administrative appeal or lawsuit has been filed.

(7) The counselor shall be authorized to issue formal administrative findings relating to disputes between requestors and public bodies concerning requests for records.

(c)(1) Custodians electing to request an extension of time to respond pursuant to subsection (d) of Section 5 shall attach the request with a short and plain statement of why an extension is needed and the amount of time requested.

(2) The counselor may order the requestor to respond to the request or issue a response without requiring a response from the requestor.

(3) The counselor shall issue a written response to any request from a custodian within five business days of receipt of the request, or if one was ordered, receipt of the response of the requestor of the records.

(d)(1) Any requestor constructively or expressly denied the right to inspect or copy records by a custodian under subsection (c) of Section 5 may appeal the denial to the counselor by filing a notice of appeal with the counselor.

(2) The filing of an administrative appeal is not a prerequisite to filing a civil action pursuant to Section 10.

(3) A notice of appeal to the counselor shall be filed within 30 days after the denial by the custodian.

(4) For the purposes of this subsection, the notice of appeal shall be deemed to be filed on the date it is received by the counselor or on the date it is postmarked, if
received more than 30 days after the date of the denial from which the appeal is taken.

(e) A notice of appeal shall contain all of the following:

(1) A filing fee of one hundred dollars ($100) or an accompanying affidavit of substantial hardship.

(2) A copy of the written record request submitted to the custodian by the requestor, or if the request was made orally, the time, date, and manner of the request and the agency employee upon whom the request was made.

(3) A copy of the written response provided by the custodian, or if no response was made, a statement that no response was provided by the custodian.

(4) A short and plain statement of the relief sought by the requestor.

(5) A certificate showing service of the appeal and a copy of all the documents submitted was sent to the custodian who denied the request, in whole or in part.

(f) Within five business days of receipt of a properly documented appeal accompanied by the requisite filing fee, the counselor shall either dismiss the appeal as having no merit or issue a ruling requiring the custodian to respond to the appeal within 10 business days.

(g) If the counselor orders a response from the custodian, the custodian shall file with the counselor within 10 business days a response containing all of the following:
(1)a. Copies of a representative sample of the
records requested without redaction.

b. Copies of these records shall not be served upon
the requestor filing the appeal.

(2) Copies of a representative sample of the records
requested as provided to the requestor, if any.

(3) A statement as to why the request should not be
granted.

(4) A certificate showing that the custodian has
served a copy of the statement as to why the request should
not be granted upon the requestor.

(h) If a custodian does not respond as required, the
counselor shall order the records produced as requested in the
appeal and require the custodian to pay one hundred dollars
($100) to the requestor.

(i) Within five business days of receipt of a timely
response of the custodian, the counselor shall issue a written
ruling regarding the request, which shall be binding upon the
custodian and requestor, unless a timely appeal of the ruling
is filed as set forth in this section.

(j) If the counselor rules that any public record or
portion of a public record was improperly withheld, the
counselor shall order the custodian to pay one hundred dollars
($100) to the requestor.

(k) If the counselor denies any relief to the
requestor, then the requestor shall bear its own costs of the
appeal.
(l) The requestor or custodian may appeal the administrative decision of the counselor by filing a notice of appeal with the counselor within 10 business days of receipt of the written ruling of the counselor.

(m) To perfect the appeal, the requestor or custodian must file a civil action pursuant to Section 10 within 30 days of the date of the issuance of the decision of the counselor.

(n) The proceedings in circuit court shall be de novo.

(o) The counselor may not be included as a party to the circuit court proceedings unless the counselor petitions to participate as amicus curiae and the petition is granted by the circuit court.

(p) If no appeal is filed, then the decision of the counselor shall be final and binding upon the requestor and the custodian.

Section 10. (a) Any requestor may enforce this act and any custodian or requestor may appeal an adverse decision by the counselor issued pursuant to Section 9 by filing a civil complaint in a circuit court in the judicial circuit in which the records in question were situated, where the alleged violation of this act occurred, or in the circuit court of Montgomery County.

(b) The complaint shall be verified and shall allege with reasonable specificity the circumstances of the denial of rights and privileges conferred by this act, or if an appeal
from an administrative decision by the counselor, allege with
reasonable specificity the reasons the decision of the
counselor should be reversed.

(c) If the complaint alleges the wrongful
withholding of a public record, the complaint shall also
include a copy of the request for the record in controversy or
a declaration of the requestor making an oral request, a copy
of the response of the custodian, if a response was received,
and any decision of the counselor, if an administrative appeal
was sought.

(d) If an administrative appeal was sought with the
counselor, the appeal shall include a copy of the decision of
the counselor.

(e) The court shall make a preliminary determination
of whether the complaint raises a sufficient reason to believe
a violation of this act may have occurred.

(f) If the court determines the complaint fails to
raise a sufficient reason to believe a violation of this act
may have occurred, the court shall dismiss the complaint.

(g) If the court determines the complaint of the
requestor raises a sufficient reason to believe a violation of
this act may have occurred, the court shall order the
custodian to file an answer and raise all defenses within 14
days.

(h) If the court determines that the complaint of
the custodian raises a sufficient reason to believe a
violation of this act may have occurred, the burden rests upon
the custodian to sustain his or her action, and the circuit
court shall review the matter de novo.

(i)(1) The circuit court may review any record in
controversy in camera.

(2) The circuit court may permit the parties to
engage in discovery pursuant to the Alabama Rules of Civil
Procedure.

(j)(1) The circuit court may order either party to
notify a private individual, a private business, a
governmental employee, or a governmental official whose name
appears in the requested records of the filing of the suit.

(2) Any entity shall have standing to intervene in
any suit regarding a request for records to argue and present
evidence for or against the release of the requested records.

(k) If the court determines that a record was
properly withheld under this act, the contents of the record
may not be disclosed or utilized in any other legal proceeding
by any individual or attorney who attends the in camera
portion of the proceedings.

(l) The circuit court shall have jurisdiction to
enjoin a custodian or a governmental body from withholding
records, to order the disclosure of a record, and to grant any
other equitable relief as may be appropriate.

(m)(1) The circuit court shall impose a civil
penalty against the custodian of a record who is determined to
have failed to respond to a record request or intentionally
withheld a public record without reasonable justification.
(2) For the purposes of this section, reasonable justification shall include, but not be limited to, a good faith reliance on any currently operative state law, an opinion of the Attorney General, or an advisory or formal decision of the Public Access Counselor.

(3) Reasonable justification may not include that the decision to withhold a record was made by an employee of the custodian instead of the custodian.

(n) The following civil penalties shall apply:

(1) Not less than seventy-five dollars ($75) per day from the date the public record should have been provided to the requestor.

(2) Not more than one thousand five hundred dollars ($1,500) for the first violation of this act without reasonable justification in the prior two-year period.

(3) Not more than three thousand dollars ($3,000) for a second violation of this act without reasonable justification in the prior two-year period.

(4) Not more than three thousand five hundred dollars ($3,500) for each additional violation of this act without reasonable justification in the prior two-year period.

(o) Penalties imposed against a custodian of the requested public record who is an employee of a governmental body shall neither be paid by the governmental body he or she serves nor reimbursed to the custodian by the governmental body he or she serves.
(p) All civil penalties imposed under this act shall be placed in the state General Fund for the purpose of funding the office of the Public Access Counselor established in Section 9.

(q)(1) If a requestor or custodian challenges a written order of the counselor made pursuant to the administrative appeal procedure established in Section 9, and a circuit court substantially affirms the ruling of the counselor in an appeal proceeding pursuant to this act, then the circuit court shall award the prevailing party reasonable attorneys’ fees and costs.

(2) Requests by either party for the reimbursement of costs or attorneys’ fees incurred during proceedings initiated under Section 10 shall be governed by the Alabama Litigation Accountability Act, Article 6, Chapter 19, Title 12, Code of Alabama 1975, except that the term defense as defined in Section 12-19-271, Code of Alabama 1975, shall include the reason given by the custodian for withholding the record in question.

(3) A governmental body may pay for or provide for the legal expenses of the custodian of the record in a proceeding initiated under this act, and the governmental body may pay for or reimburse any costs or fees owed to the plaintiff under this act.

(r)(1) Except as to cases the court considers of greater importance, proceedings initiated under this act shall
be given precedence over all other cases in the circuit and appellate courts.

(2) All hearings, trials, and oral arguments in proceedings initiated under this act shall be assigned for the earliest practicable date.

(s) A complaint filed pursuant to this section not based upon an appeal of an administrative ruling of the counselor shall be brought within 60 days of the date that a custodian issues a written denial of all or a portion of a request for records or the date the request is deemed denied by a custodian's failure to respond to a request made pursuant to this act.

Section 11. In addition to any existing immunity that may apply, the counselor and any custodian, governmental employee, or governmental official, who, acting upon a good faith belief that the document was a public record, produces any record upon the request of a person, or gives an informal or formal opinion that the records be produced, shall have an absolute immunity from civil liability relating to the publication of any defamatory statements or invasions of privacy contained in the records produced which were not authored by the counselor, custodian, public employee, or public official providing the record, even if it is later determined administratively or judicially that the record was not a public record.

Section 12. Section 36-12-40, Code of Alabama 1975, is expressly repealed. All specific references in the Code of
Alabama 1975, to Section 36-12-40, Code of Alabama 1975, shall be considered a reference to this act, and where expressly excluded or included from application of Section 36-12-40, Code of Alabama 1975, the exclusion or inclusion from application shall remain as it applies to this act.

Section 13. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.