

1 SB57
2 203975-1
3 By Senator Ward
4 RFD: Governmental Affairs
5 First Read: 04-FEB-20
6 PFD: 01/28/2020

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8 SYNOPSIS: This bill would repeal existing law
9 providing access to public records and replace it
10 with a new Alabama Public Records Act with
11 provisions establishing the rights of citizens to
12 access public records, enumerating exceptions to
13 disclosure, establishing procedures for making and
14 responding to requests for access, setting the
15 charges associated with responding to requests,
16 establishing a Public Access Counselor within the
17 Alabama Department of Examiners of Public Accounts,
18 creating administrative and judicial remedies, and
19 establishing civil penalties for noncompliance.

20
21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 Relating to public records; to repeal Sections
26 36-12-40 and 36-12-41, Code of Alabama 1975; to establish the
27 Alabama Public Records Act; to require governmental bodies of

1 this state to adopt rules allowing each citizen to inspect and
2 take a copy of any public record upon a request made in
3 accordance with this act; to require governmental bodies to
4 designate a custodian of records; to provide for exemptions to
5 disclosure; to establish special access to documents
6 determined to be of historical value by the State Records
7 Commission; to establish procedures to access public records;
8 to establish what charges could be assessed for access to
9 public records; to create the position of Public Access
10 Counselor within the Alabama Department of Examiners of Public
11 Accounts; to grant the public access counselor authority to
12 decide requests from custodians for additional time to comply
13 with records requests; to establish administrative procedures
14 to appeal denials of access to records; to create procedures
15 for judicial enforcement of public record access rights; to
16 create civil penalties for failing to comply with the act; and
17 to provide an absolute privilege and immunity for the
18 publication of defamatory statements or invasions of privacy
19 contained in records produced pursuant to a request for
20 access.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Name.

23 This act shall be known and may be cited as the
24 Alabama Public Records Act.

25 Section 2. Legislative Intent.

26 The Legislature finds and declares the following:

1 (1) All political power is inherent in the people.
2 Thus, it is the public policy of the State of Alabama that
3 every person is vested with the inherent right to know and be
4 fully informed about the workings of government.

5 (2) The purpose of this act is to ensure and
6 facilitate the public's right of access to and review of
7 public records so they may efficiently and intelligently
8 exercise their inherent political power.

9 (3) All governmental records not expressly exempt
10 shall be open for public inspection. The duty of all
11 government agencies and political subdivisions to provide
12 access to public records shall be broadly construed.

13 (4) The Alabama Public Records Act does not create,
14 directly or indirectly, any rights of privacy or any remedies
15 for violation of any rights of privacy; nor shall the act,
16 except as specifically set forth in the act, establish any
17 procedures for protecting any person from release of
18 information contained in public records.

19 (5) The purpose of this act is also to protect and
20 preserve governmental records belonging to the State of
21 Alabama. Governmental records are the property of the State of
22 Alabama.

23 (6) The privacy interests of individuals are
24 adequately protected in the specific exceptions to the act or
25 in the statutes that authorize, create, or require the
26 records.

1 (7) Except as may be required by other laws directly
2 pertaining to a particular governmental record or governmental
3 body, a governmental body shall follow the procedures required
4 by the Alabama Public Records Act.

5 Section 3. Definitions.

6 As used in this act, the following words shall have
7 the following meanings:

8 (1) CONFIDENTIAL BUSINESS INFORMATION. Records
9 containing any of the following:

10 a. Trade secrets obtained from a person or private
11 business which are of a privileged or confidential nature and
12 required by law to be submitted to a government agency.

13 b. Data or information of a proprietary nature,
14 produced or collected by a governmental body or private
15 individual or private business entity which would place the
16 governmental body or private individual or business entity in
17 a competitive disadvantage, where the data or information has
18 not been publicly released, published, copyrighted, or
19 patented.

20 c. Data or information of a proprietary nature,
21 produced or collected by or for faculty or staff of state
22 institutions of higher learning, or other governmental bodies,
23 in the conduct of or as a result of, study or research on
24 commercial, scientific, technical, or scholarly issues,
25 whether sponsored by the institution alone or in conjunction
26 with a governmental body or private concern, where the data,

1 records, or information has not been publicly released,
2 published, copyrighted, or patented.

3 (2) COUNSELOR. The Public Access Counselor selected
4 pursuant to Section 10 of this act.

5 (3) CUSTODIAN. A person designated by a governmental
6 agency to maintain actual possession, custody, or control of
7 governmental records and who has been given the expressed,
8 implied, or apparent authority from the governmental body or a
9 governmental official to grant or deny a request for access to
10 a governmental record. If a governmental body has not
11 designated a custodian pursuant to this act, the custodian
12 shall be the governmental official or governmental employee
13 having ultimate executive responsibility for any governmental
14 body having possession, custody or control of governmental
15 records.

16 (4) ELECTRONIC. Relating to technology having
17 electrical, digital, magnetic, wireless, optical,
18 electromagnetic, or similar capabilities.

19 (5) GOVERNMENTAL BODY or GOVERNMENTAL AGENCY. All
20 boards, bodies, and commissions of the executive and
21 legislative departments of the state or its political
22 subdivisions or municipalities which expend or appropriate
23 public funds; all multimember governing bodies of departments,
24 agencies, institutions, and instrumentalities of the executive
25 and legislative departments of the state or its political
26 subdivisions or municipalities, including, without limitation,
27 all corporations and other instrumentalities whose governing

1 boards are comprised of a majority of members who are
2 appointed or elected by the state or its political
3 subdivisions, counties or municipalities; and all
4 quasi-judicial bodies of the executive and legislative
5 departments of the state and all standing, special, or
6 advisory committees or subcommittees of, or appointed by, the
7 body. The term does not include any of the following:

8 a. Legislative party caucuses or coalitions.

9 b. Alabama appellate or trial courts, except as
10 required by the constitution of this state or any organization
11 governed by rules of the Alabama Supreme Court.

12 c. Voluntary membership associations comprised of
13 Public Employees, counties, municipalities, or their
14 instrumentalities which have not been delegated any
15 legislative or executive functions by the Legislature or
16 Governor.

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

22 (7) GOVERNMENTAL OFFICIAL or PUBLIC OFFICIAL. Any
23 person elected to public office, whether or not that person
24 has taken office, by the vote of the people at state, county,
25 or municipal levels of government or their instrumentalities,
26 including governmental corporations, and any person appointed
27 to a position at the state, county, or municipal levels of

1 government or their instrumentalities, including governmental
2 corporations.

3 (8) GOVERNMENTAL RECORD. Any record received by a
4 governmental official or governmental employee while they are
5 on-duty, or made, generated, created by the government
6 official or governmental employee, while using government
7 space, resources, or equipment.

8 (9) LAW ENFORCEMENT INVESTIGATIVE REPORTS. Field
9 notes, witness statements, crime scene evidence, and records
10 created or received by sworn law enforcement personnel
11 employed by governmental bodies relating to whether a crime
12 has been committed or the identity of the person or persons
13 who committed the crime which are intended to remain
14 confidential work-product provided to attorneys representing
15 the government.

16 (10) PERSON. Any private individual, for-profit or
17 non-profit business, private business, trust, estate, or
18 similar entity.

19 (11) PERSONAL PRIVACY INFORMATION: Any of the
20 following information concerning a private individual:

- 21 a. Social Security number.
- 22 b. Date of birth.
- 23 c. Weight.
- 24 d. Mother's birth name.
- 25 e. Credit or debit card account numbers.
- 26 f. Personal e-mail addresses that are not provided
27 or hosted by or at the expense of a governmental agency.

- 1 g. Financial account numbers or data.
- 2 h. Medical examinations, treatments, or diagnoses.
- 3 i. Psychological examinations, treatments, or
- 4 diagnoses.
- 5 j. Names and dates of birth of children.
- 6 k. Names and address of current or former spouse.
- 7 l. Unlisted or unpublished home telephone numbers or
- 8 street number of home addresses.
- 9 m. Credit rating score.

10 (12) PERSONAL RECORD. A record of a wholly personal
11 nature in the possession of a governmental official or
12 governmental employee which was not made or received by any
13 governmental official or governmental employee in the
14 performance of their duties.

15 (13) PRIVATE BUSINESS. A proprietorship,
16 corporation, partnership, company, or other entity that
17 conducts any type of legal trade or business in the State of
18 Alabama which is not a governmental body.

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

21 (15) PUBLIC RECORD. Any of the following:

22 a. Any record made or received pursuant to law or
23 ordinance or in connection with the transaction of official
24 business by any governmental agency. A public record includes
25 any record that is reasonably necessary to record the business
26 of government and which is not subject to a statutory

1 exemption from disclosure under Alabama law or prevented from
2 disclosure by an applicable federal law.

3 b. Any record received by a private individual or
4 private business from, or maintained on behalf of, a
5 governmental agency, governmental employee, or Governmental
6 Official in association with the transaction of official
7 business by the private individual or business.

8 (16) RECORD. Information inscribed on a tangible
9 medium and is retrievable in perceivable form. It includes all
10 documents, papers, electronic mail, letters, maps, books,
11 tapes, images, videos, films, audio recordings, text messages,
12 spreadsheets, databases or other material, regardless of the
13 physical form, characteristics, or means of transmission.

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

16 (18) REQUESTOR. A person making a written request
17 for a record to the custodian of that record pursuant to
18 Section 6.

19 (19) SCHOLASTIC RECORDS. Records maintained by a
20 governmental body which is an educational governmental agency
21 or institution or by a person acting for such agency or
22 institution which contain information directly related to an
23 identifiable student. The term does not include general
24 information relating to the scholastic performance of students
25 of such agencies or institutions if the identity of individual
26 students cannot be determined from the record.

1 (20) SENSITIVE PERSONNEL INFORMATION. Any of the
2 following:

3 a. Personal privacy information contained in the
4 employment records of a governmental employee or governmental
5 official.

6 b. Critical observations of candidates for
7 government employment submitted upon express condition that
8 the observations remain confidential.

9 c. Drug and alcohol testing results.

10 d. Disciplinary records during the course of
11 disciplinary action against a governmental employee and prior
12 to the employee's exhaustion or abandonment of the
13 administrative appeal process.

14 Section 4. Right to Inspect and Copy Public Records.

15 (a) Every person has the right to inspect or take a
16 copy of any public record upon request made in accordance with
17 Section 6.

18 (b) Each governmental body shall adopt rules to
19 ensure its compliance with this act and shall designate a
20 custodian of records.

21 (c) Every custodian of a record shall allow a
22 requestor to inspect and take a copy of any public record in
23 accordance with Section 6. Upon request, a copy of a public
24 record shall be produced or made available to the requestor in
25 the most economical and efficient method available. When hard
26 copies of responsive public records are being produced and the
27 requestor requests to receive the public records by mail, the

1 custodian of records shall mail the public records to the
2 requestor using the United States mail upon prepayment of
3 postage.

4 (d) Every custodian of governmental records shall
5 take all necessary precautions for the preservation and
6 safekeeping of governmental records.

7 Section 5. Exceptions to Disclosure.

8 (a) The following governmental records shall not be
9 considered public records and are exempt from disclosure under
10 this chapter:

11 (1) Records specifically protected from disclosure
12 by federal law, including, but not limited to, the Family
13 Educational Rights and Privacy Act (FERPA) and the Health
14 Insurance Portability and Accountability Act (HIPAA).

15 (2) Records protected by order of a court with
16 jurisdiction over the records.

17 (3)a. Library circulation records of any public
18 school, college, or university library of this state, or any
19 library of this state, or any public library.

20 b. Notwithstanding paragraph a., any parent or legal
21 guardian of a minor student or a student receiving special
22 education services in a public school shall have the right to
23 inspect library circulation records that pertain to such
24 student unless prohibited by federal law.

25 (4) Records that contain personal privacy
26 information. Only portions of the records that contain

1 personal privacy information shall be exempt, and the portions
2 should be redacted from the record

3 (5) Scholastic records.

4 (6) Records concerning security plans, procedures,
5 assessments, measures, or systems, or the security or safety
6 of persons, structures, facilities, or other infrastructures,
7 including, without limitation, information concerning critical
8 infrastructure, as defined by federal law, and critical energy
9 infrastructure information, as defined by federal law, the
10 public disclosures of which could reasonably be expected to be
11 detrimental to public safety or welfare; provided, however,
12 that when the record involves critical infrastructure or
13 critical energy infrastructure information, the owners and
14 operators of the infrastructure shall be given access to the
15 records.

16 (7)a. Sensitive personnel information within any
17 record.

18 b. In the event paragraph a. applies, only the
19 sensitive personnel information shall be redacted.

20 c. Notwithstanding paragraphs a. and b., critical
21 observations of candidates for public employment submitted on
22 the condition of anonymity shall become public records if the
23 candidate is hired for the position.

24 d. Nothing in this subdivision shall be construed to
25 prevent a governmental employee of a governmental body that is
26 subject to an internal investigation or disciplinary action
27 from obtaining records concerning a governmental employee to

1 the extent required to provide due process under the United
2 States Constitution.

3 (8)a. Confidential business information within any
4 record.

5 b. In the event paragraph a. applies, only the
6 confidential business information shall be redacted.

7 (9) Law enforcement investigative reports of open
8 and active investigations. Nothing in this section shall
9 preclude the disclosure of law enforcement investigative
10 reports, including the testimony of law enforcement
11 investigators, to a state administrative agency authorized by
12 law to investigate or conduct administrative contested case
13 hearings in any matter related to the suspension, revocation,
14 or restriction of a professional license or registration for
15 the protection of the public health and safety. The following
16 information shall be considered public records even if
17 included in law enforcement investigative reports:

18 a. The time, date, location, or nature of a reported
19 crime.

20 b. The sex, age, or race of an arrested individual.

21 c. The sex, age, or race of a victim. This shall not
22 include a victim of a sexual offense listed in Article 4 of
23 Chapter 6 of Title 13A, Code of Alabama 1975; a victim of a
24 stalking offense listed in Article 6 of Chapter 6 of Title
25 13A, Code of Alabama 1975; a victim of domestic violence or
26 any related offense listed in Article 7 of Chapter 6 of Title
27 13A, Code of Alabama 1975; or a victim of a human trafficking

1 offense listed in Article 8 of Chapter 6 of Title 13A, Code of
2 Alabama 1975.

3 d. The time, date, or location of the incident and
4 of the arrest.

5 e. Records gathered during a criminal investigation
6 and placed into the file of a criminal investigation which
7 were public records before the law enforcement investigation
8 began.

9 f. The Alabama Uniform Arrest Report or supplemental
10 narrative written by a member of law enforcement.

11 (10) Real estate appraisals, engineering or
12 feasibility estimates, or other similar records related to the
13 purchase, exchange, or lease of real property made for or by a
14 governmental body until such time as the property has been
15 acquired or the proposed transaction has been terminated or
16 abandoned. However, records containing the material terms of
17 any contract to purchase, exchange, or lease real property
18 made for or by a governmental body as defined by Section
19 36-25A-2(4), Code of Alabama 1975, shall be considered public
20 records open to inspection when such contracts are considered
21 during the open or public portion of a meeting as defined by
22 Section 36-25A-2(7), Code of Alabama 1975.

23 (11)a. Records gathered by a governmental body
24 during a search to fill an employment position submitted with
25 an expressed statement from the applicant that the application
26 was being submitted on condition that it remains confidential.
27 The conditions may be honored by a governmental body until the

1 point that the applicant is determined to be one of the top
2 three candidates applying for the position. All applications
3 for a position that do not expressly request confidentiality
4 pursuant to this subdivision shall be public records.

5 b. Notwithstanding paragraph a., the governmental
6 body must disclose, upon request, the number of applicants
7 considered for any governmental employment and may disclose,
8 in its discretion, the resumes concerning all of the
9 candidates' records gathered by a governmental body during a
10 search to fill an employment position submitted with an
11 expressed statement from the applicant that the application
12 was being submitted on condition that it remains confidential.
13 Such conditions may be honored by a governmental body until
14 the point that the applicant is determined to be one of the
15 top three candidates applying for the position.

16 c. All applications for a position that do not
17 expressly request confidentiality pursuant to this subdivision
18 shall be public records.

19 d. Notwithstanding paragraph d., the governmental
20 body must disclose, upon request, the number of applicants
21 considered for any governmental employment and may disclose,
22 in its discretion, the resumes concerning all of the
23 candidates.

24 (12) Any of the following, as they pertain to
25 governmental bodies that are institutions of higher education
26 and their associated foundations:

1 a. Records concerning the identity of donors or
2 potential donors of a governmental body which is an
3 institution of higher education, or their associated
4 foundations.

5 b. Records regarding tenure or peer evaluations,
6 appointments, applications for admissions, retention
7 decisions, and promotions; provided, however, that records
8 related to the final decisions about tenure, appointments,
9 retention, and promotions are not exempt under this
10 subdivision.

11 c. Notwithstanding paragraphs a. and b., information
12 reported by a registered 501(c)(3) under the Internal Revenue
13 Code on the Schedule B of Form 990 are not exempt from
14 disclosure under this act.

15 (13) Records developed, collected, or received by or
16 on behalf of faculty, staff, employees, or students of a
17 governmental body that is a state institution of higher
18 education or any public or private entity supporting or
19 participating in the activities of a state institution of
20 higher education in the conduct of, or as a result of, study
21 or research on medical, legal, scientific, technical,
22 scholarly, or artistic issues, whether sponsored by the
23 institution alone or in conjunction with a governmental body
24 or private entity, until such information is published,
25 patented, or otherwise publicly disseminated.

26 (14) Records containing test questions, scoring
27 keys, and other examination data pertaining to administration

1 of a licensing examination, examination for employment, or
2 academic examination; except that written promotional
3 examinations and the scores or results thereof conducted
4 pursuant to the state personnel system or any similar system
5 shall be available for inspection, but not copying or
6 reproduction, by the subject of the examination after the
7 conducting and grading of any such examination

8 (15) Library or museum materials contributed by a
9 private individual, private business, or organization to the
10 extent of any limitations placed thereon as conditions of such
11 contributions and records containing the identity of donors of
12 such materials who have requested anonymity.

13 (16) Records expressly made confidential,
14 privileged, or otherwise exempted from disclosure by existing
15 law specifically applicable to a record or governmental
16 agency.

17 (17) Ballots reflecting votes in an election that is
18 being contested or for which the contest period has not
19 expired.

20 (b) (1) The exemptions in subsection (a) are not
21 mutually exclusive.

22 (2) The exemptions in subsection (a) are to be
23 construed narrowly, with the express purpose of making as many
24 records considered public records as possible.

25 (c) Notwithstanding any of the exemptions in
26 subsection (a) of this section:

1 (1) Governmental records that are determined to be
2 of historic value by the State Records Commission pursuant to
3 Section 41-13-21, Code of Alabama 1975, or the Local
4 Government Records Commission pursuant to Section 41-13-23,
5 Code of Alabama 1975, and that are transferred to the custody
6 of the Department of Archives and History shall be open to
7 public inspection and use for ten years following the date
8 they were due to be transferred, subject to such rules and
9 regulations as to time, place, and manner as adopted by the
10 Department of Archives and History.

11 (2) Governmental records expressly declared to be
12 open to public inspection by other state law shall remain open
13 under the terms and subject to any limitations provided for in
14 any other state law specifically applicable to those records.

15 (d) Nothing in this section shall prohibit any state
16 officer or governmental agency, or county, municipal, or other
17 local government official from destroying or otherwise
18 disposing of governmental records in accordance with Section
19 41-13-21, Code of Alabama 1975, or Section 41-13-23, Code of
20 Alabama 1975, and nothing in this section shall give any
21 person the right to prevent lawful destruction or disposition
22 under those sections.

23 Section 6. Procedures to Access Public Records from
24 a Custodian.

25 (a) Public records shall be open to inspection and
26 copying by any person during the regular office hours of the
27 custodian of such public records. The custodian may require

1 the requestor to provide his or her name and, if relevant, an
2 address to where records are to be sent. The custodian may
3 require the request to be in writing.

4 (b) A request for public records shall identify the
5 requested records with reasonable specificity. The request
6 need not make reference to this act in order to invoke the
7 provisions of this chapter or to impose the time limits for
8 response by the custodian. A request may be made on a form as
9 provided in subsection (a) of Section 9. The requestor may
10 submit the request by mail or electronic means. A custodian of
11 governmental records shall as soon as practicable, but in all
12 cases within 14 calendar days of receiving a request, take one
13 of the following actions:

14 (1) Provide the requested records, provide a method
15 for the requestor to access the requested records, or make the
16 source records available for search by the requestor.

17 (2) Deny access to the requested records because
18 release of the requested records is prohibited by this act or
19 other applicable state or federal laws. A denial by a
20 custodian shall:

21 a. Be in writing on a form and providing at least
22 all of the responsive information noted in subsection (b) of
23 Section 9.

24 b. Identify with reasonable particularity the volume
25 and subject matter of withheld records.

26 c. As to each category of redaction or withheld
27 records, include a citation to the specific provision of the

1 Code of Alabama 1975 or federal law which authorizes the
2 custodian to redact or withhold the records.

3 d. Contemporaneously be provided to the chief
4 executive officer or chairperson of the governmental body
5 employing the custodian.

6 (3) Provide, in part, the requested record and
7 redact the record in part because the release of part of the
8 records is prohibited by the laws of this state or federal
9 law. When access to a portion of a requested record is
10 withheld, the custodian may redact only that portion of the
11 requested record to which an exemption applies and shall
12 release the remainder of the requested record.

13 (4) Specify that it is not practically possible to
14 provide the requested records or to determine whether they are
15 available within the 14 calendar day period. The response
16 shall be in writing and specify the conditions that make a
17 response impossible. It is permissible for the custodian to
18 provide responsive records as they are compiled and become
19 available. If such a response is made within 14 calendar days,
20 the custodian shall have an additional seven calendar days in
21 which to provide one of the three responses provided in
22 subdivision (1), (2), or (3).

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

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

1 the record if the identity of the proper custodian known to
2 the custodian to whom the original request was directed.

3 (c) A custodian or governmental body may petition
4 the public access counselor for additional time to respond to
5 a request for records when the request is for an extraordinary
6 volume of records and a response within the time required by
7 this act will prevent the custodian or the custodian's staff
8 from meeting operational responsibilities. Before proceeding
9 with the petition, the custodian or governmental body shall
10 make reasonable efforts to reach an agreement with the
11 requestor concerning the production of the records requested,
12 providing a method for the requestor to access the requested
13 records, or making the source records available for search by
14 the requestor.

15 (d) Subject to subsection (c) of Section 8, a
16 custodian or governmental body shall not be required to create
17 a new record if the requested record does not already exist. A
18 custodian or governmental body may abstract, compile, create,
19 or summarize information under such fees, terms, and
20 conditions as agreed between the requestor and the custodian
21 or governmental body.

22 (e) Failure by a custodian or governmental body to
23 respond within the time limits specified in Section 6 to a
24 request for records shall be deemed a denial of the request
25 and shall constitute a violation of this act.

26 (f) Public records received or maintained by a
27 private individual or private business in connection with the

1 performance of a service or function for or on behalf of a
2 governmental body shall be subject to disclosure from the
3 custodian of the governmental body to the same extent that the
4 records would be subject to disclosure if received, possessed
5 or maintained by such custodian. private individuals or
6 private businesses having possession of records obtained in
7 the performance of a service or function for or on behalf of a
8 governmental body which are not in the actual possession of
9 the responsible custodian of the governmental body shall
10 immediately provide the records to the custodian upon request
11 of the custodian.

12 (g) Each governmental body shall adopt and publish
13 procedures consistent with this section to be followed in
14 responding to requests for access to inspect or copy public
15 records, which procedures shall provide full access to public
16 records, protect records from damage and disorganization,
17 prevent excessive disruption of the body's essential
18 functions, provide assistance and information upon request,
19 and insure efficient and timely action in response to requests
20 for inspection of public records.

21 (h) Each governmental body having possession,
22 custody, or control of public records shall designate the
23 persons as necessary to carry out the duties of the custodian
24 under this act and shall ensure that a custodian, or their
25 designee, is available during regular business hours of the
26 governmental body to carry out such duties.

1 (i) Each governmental body, upon request of any
2 person, shall provide the following information:

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

5 (2) The title, phone number, email address, and
6 physical address of the custodian of the records of the
7 governmental body and of any other governmental employee who
8 is ordinarily available to act on record requests made at the
9 location where public records can be viewed.

10 (3) The usual fees, if any, charged for copies of
11 public records.

12 (4) The written procedures to be followed in
13 requesting access to and obtaining copies of a public record.
14 These procedures shall not require requests for public records
15 to be submitted in person. If the governmental body has an
16 official website, the procedures for requesting public records
17 shall be made accessible to the public on the official website
18 and at all public offices for the governmental body where
19 public records can be requested or viewed.

20 Section 7. Charges for Public Records.

21 (a) A requestor may view a public record at no
22 charge. For the protection of original governmental records,
23 custodians may provide copies of public records for review by
24 persons at no charge or impose restrictions on the ability of
25 persons to handle or damage original governmental records.
26 Persons may not be prohibited from using their own equipment
27 to photograph, electronically scan, or make copies of public

1 records at their own expense unless such arrangements could
2 reasonably be expected to cause damage to original
3 governmental records or unreasonably disrupt the
4 administration of the governmental agency. Custodians are
5 authorized and encouraged to provide copies of public records
6 to requestors without charge.

7 (b) A custodian or governmental body may make
8 reasonable charges not to exceed its actual cost incurred in
9 accessing, duplicating, or supplying requested records. No
10 custodian or governmental body may impose any extraneous,
11 overhead, intermediary, or surplus fees or expenses to recoup
12 the overhead associated with creating or maintaining
13 governmental records or transacting the general business of
14 the custodian or governmental body upon a requestor of public
15 records residing in this state. If a requestor is not a
16 resident of this state, the custodian may charge the requestor
17 an additional fee not to exceed 20 percent of the actual cost
18 of accessing, duplicating, supplying, and transmitting copies
19 of public records to the requestor.

20 (c) Any hard-copy or non-electronic duplicating fee
21 charged by a custodian or governmental body shall not
22 unreasonably exceed the actual cost of duplication. A charge
23 of twenty cents (\$.20) or less per page for copying
24 non-electronic records sized 8 and one-half by 11 or 14 inches
25 in a black and white format shall be considered a prima facie
26 reasonable charge unless the requestor can provide substantial
27 evidence that the actual cost was more than ten cents (\$.10)

1 less than the amount charged. A custodian may charge up to
2 thirty cents (\$.30) per page for two-sided copies. A charge of
3 seventy-five cents (\$.75) or less per page for copying
4 non-electronic records sized 8 and one-half by 11 or 14 inches
5 in a color format shall be considered a prima facie reasonable
6 charge unless the requestor can provide substantial evidence
7 that the actual cost per page was more than twenty cents
8 (\$.20) less than the amount charged.

9 (d) A custodian or governmental body may charge the
10 actual cost to the custodian for supplying larger sized hard
11 copies of public records.

12 (e) A public record produced from a geographical
13 information system shall be provided to the owner of the land
14 that is the subject of the request at actual cost. When a
15 public record produced from a geographical information system
16 is requested by a person who is not the owner of the subject
17 property, the custodian or governmental body, on a pro rata
18 per acre basis, may charge for the cost of creating
19 topographical maps developed by the custodian or governmental
20 body, for the maps or portions thereof, which encompass a
21 contiguous area greater than 50 acres.

22 (f) If the charge for copies of public records 8 and
23 one-half by 14 inches or smaller exceeds the charges that are
24 deemed to be prima facie reasonable charges as set forth in
25 subsection (c) of Section 7, then the charge for the supplying
26 requested records shall be estimated by the custodian and
27 communicated to the requestor no later than 24 hours in

1 advance of the deadline for the custodian to respond to the
2 request. If the estimation is not communicated as required,
3 the custodian may not charge more than the charges set forth
4 in subsection (c) of Section 7 for copies of public records 8
5 and one-half by 14 inches or smaller.

6 (g) Where a custodian or governmental body
7 determines in advance that charges for producing the requested
8 records are likely to exceed two hundred dollars (\$200), the
9 custodian or governmental body, before continuing to process
10 the request, may require the requestor to agree to payment of
11 a deposit not to exceed the amount of the advance
12 determination. The deposit shall be credited toward the final
13 cost of supplying the requested records. The period within
14 which the custodian or governmental body shall respond under
15 this subsection shall be tolled for the amount of time that
16 elapses between notice of the advance determination and the
17 response of the requestor. If the deposit amount exceeds the
18 actual costs of reproduction, the requestor shall be entitled
19 to a refund of the remainder.

20 (h) Before processing a request for records, a
21 custodian or governmental body may require the requestor to
22 pay any amounts owed to the custodian or governmental body for
23 previous requests for records that remain unpaid 30 days or
24 more after billing.

25 (i) Unless expressly authorized otherwise by law,
26 when requested to provide a certified copy of a public record,
27 a governmental agency may charge up to one dollar (\$1) per

1 copy for the first 10 pages, fifty cents (\$.50) for the next
2 90 pages of the same record and twenty-five cents (\$.25) for
3 any additional certified copies for the same record.

4 (j) public records maintained by a custodian or
5 governmental body in an electronic data processing system,
6 computer database, or any other structured collection of data
7 shall be made available to a requestor at a reasonable cost,
8 not to exceed the actual cost in accordance with subsection
9 (c) of Section 7. If the records are produced only in
10 electronic format, then the cost shall not exceed one cent
11 (\$.01) per page.

12 Section 8. Electronic Data.

13 (a) A custodian or governmental body shall produce
14 public records maintained in an electronic database in any
15 tangible medium identified by the requestor if the request
16 output is within the capabilities of the software system used
17 by the custodian or governmental body. This may include, where
18 the custodian or governmental body has the capability, the
19 option of posting the records on a website or delivering the
20 records through an electronic mail address provided by the
21 requestor, if that medium is used by the custodian or
22 governmental body in the regular course of business. A
23 custodian or governmental body shall not be required to
24 produce records from an electronic database in a format not
25 within the capability of the software used by the custodian or
26 governmental body.

1 (b) A custodian or governmental body shall make
2 reasonable efforts to provide records in any format within the
3 capability of the software utilized by the custodian or
4 governmental body under the terms and conditions as agreed
5 with the requestor, including the payment of reasonable costs,
6 or to provide a method for the requestor to access the
7 requested records or make the source records available for
8 search by the requestor.

9 (c) The conversion of data from one existing format
10 to another existing format already available to the
11 governmental agency without additional cost shall not be
12 considered the creation, preparation, or compilation of a new
13 public record. However, the running of a query or excision of
14 exempt fields may be the subject of additional fees as
15 provided in subsection (d) of Section 6.

16 (d) When designing or acquiring an electronic record
17 keeping system, a governmental agency shall consider whether
18 the system is capable of providing data in some common format
19 such as, but not limited to, portable data format, comma
20 separated values, or the American Standard Code for
21 Information Interchange.

22 (e) A governmental agency shall not enter into a
23 contract for the creation or maintenance of a public records
24 database if that contract impairs the ability of the public to
25 inspect or copy public records of the agency.

26 (f) Subject to restrictions of copyright and trade
27 secret laws and governmental record exemptions to disclosure,

1 agency use of proprietary software must not diminish the right
2 of the public to inspect and copy a public record.

3 Section 9. Suggested Forms.

4 (a) A governmental body shall make available online
5 and upon written request a sample records request form in
6 substantially the following format:

7 SAMPLE RECORDS REQUEST FORM

8 Date of Request: _____

9 ___ Copy Requested

10 ___ Record To Be Reviewed On Site

11 Public Body/Agency/Department _____

12 Requestor Information:

13 Name: _____

14 Address: _____

15 Phone: _____

16 Email: _____

17 Preferred Contact Method: _____

18 Preferred Delivery Method: _____

19 List of Records Requested:

20 Optional: Any additional information you may wish to
21 provide that might expedite this process (case number, code
22 section).

23 Requestor Signature: _____

24 Print Name: _____

25 Received By:

26 Name: _____

27 Signature: _____

1 Date: _____

2 (b) A Public Body shall utilize a Sample Records
3 Response Form in substantially the following format:

4 SAMPLE RECORDS RESPONSE FORM

5 Name of Requestor: _____

6 Date of Request: _____

7 Record Requested: _____

8 Date of Determination/Response: _____

9 METHOD OF REQUEST:

10 ___ In Person

11 ___ Email

12 ___ Mail

13 ___ Phone

14 ___ Fax

15 METHOD OF RESPONSE:

16 ___ In Person

17 ___ Email

18 ___ Mail

19 ___ Phone

20 ___ Fax

21 The office of _____ makes the
22 following determination/response to the above referenced
23 records request:

24 ___ The record is provided to the requestor.

25 ___ The record(s) is/are entirely withheld because
26 the release of the records is prohibited by law. Responder

1 must cite specific code section as to each category of
2 withheld record.

3 ___ The record(s) is/are provided in part and
4 withheld in part because the release of part of the record is
5 prohibited by law. Responder must cite specific code section
6 as to each category of withheld record.

7 ___ It is not practically possible to provide the
8 requested records or to determine whether the records are
9 available within the 14 day period.

10 Responder must cite conditions that make response
11 impossible. If response is made within 14 days, the Public
12 Body will have an additional seven days in which to provide
13 one of the three preceding responses.

14 ___ I certify that the requested record(s) do not
15 exist.

16 ___ I certify that I do not have possession, custody
17 or control over the requested record(s).

18 Determination/Response made by:

19 Print Name and Title: _____

20 Signature: _____

21 Section 10. Public Access Counselor.

22 (a) There is established an office of Public Access
23 Counselor in the Alabama Department of Examiners of Public
24 Accounts.

25 (1) The office shall be administered by the Public
26 Access Counselor.

1 (2) The Alabama Department of Examiners of Public
2 Accounts shall designate a person having a juris doctorate to
3 serve as Public Access Counselor at a salary to be fixed by
4 the Department.

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

7 (1) To conduct research.

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

11 (3) To distribute to newly elected or appointed
12 public officials this act and educational materials concerning
13 this act.

14 (4) To respond to informal inquiries made by
15 requestors by telephone, in writing, in person, by facsimile,
16 or by electronic mail concerning this act.

17 (5) To grant or deny petitions from custodians for
18 extensions of time to respond to a request for records
19 pursuant to subsection (c) of Section 6.

20 (6) To issue advisory opinions to interpret this act
21 upon the request of a requestor of records. The counselor
22 shall confer with the Attorney General, prior to issuance of
23 any advisory opinions, about such requests but is not bound to
24 follow any written or informal opinion issued by the Attorney
25 General. The counselor may not issue an advisory opinion
26 concerning a specific matter with respect to which an
27 administrative appeal or lawsuit is pending.

1 (7) The counselor may issue formal administrative
2 findings relating to disputes between requestors and
3 governmental bodies or governmental agencies concerning
4 requests for records.

5 (8) The counselor shall keep and maintain public
6 records of the administrative appeals and results in a manner
7 that is indexed and searchable by the custodian and
8 governmental body involved in each appeal.

9 (c) (1) A custodian or governmental body petitioning
10 for an extension of time to respond pursuant to subsection (c)
11 of Section 6 shall attach to the request a short and plain
12 statement of why an extension is needed and the amount of time
13 requested.

14 (2) The counselor may order the requestor to respond
15 to the request or issue a response to the request for more
16 time without requiring a response from the requestor.

17 (3) The counselor shall issue a written response to
18 any request from a custodian or governmental body for more
19 time within five business days of receipt of the request or,
20 if a response was ordered from the requestor, within five days
21 of the receipt of the response of the requestor of the
22 records.

23 Section 11. Administrative Appeals to the Public
24 Records Counselor.

25 (a) A requestor denied the right to inspect or copy
26 records by a custodian may appeal to the Public Access

1 Counselor by filing a notice of administrative appeal to the
2 counselor.

3 (b) A notice of administrative appeal to the
4 counselor shall be filed within 30 days after the denial by
5 the custodian. For purposes of this subsection, the notice of
6 appeal shall be deemed to be filed on the date it is received
7 by the counselor or on the date it is postmarked, if received
8 more than 30 days after the date of the denial from which the
9 appeal is taken.

10 (c) A notice of administrative appeal shall contain
11 all of the following:

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

14 (2) A copy of the written record request submitted
15 to the custodian by the requestor.

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

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

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

24 (d) Within five business days of receipt of a
25 properly documented administrative appeal accompanied by the
26 requisite filing fee, the counselor shall either dismiss the

1 appeal as having no merit or issue a ruling requiring the
2 custodian to respond to the appeal within 10 business days.

3 (e) If the counselor orders a response from the
4 custodian, the custodian shall file with the counselor within
5 10 business days a response containing all of the following:

6 (1) Copies of a representative sample of the
7 records requested without any redaction. Copies of these
8 unredacted records shall not be served upon the requestor
9 filing the appeal.

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

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

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

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

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

26 (h) If the counselor rules that any public record or
27 portion thereof was improperly withheld, the counselor shall

1 order the custodian to pay one hundred dollars (\$100) to the
2 requestor.

3 (i) If the counselor denies any relief to the
4 requestor then the requestor shall bear the requestor's own
5 costs of the appeal.

6 (j) The requestor or custodian may appeal the
7 administrative decision of the counselor by filing a civil
8 action pursuant to Section 12 within 30 days of the date of
9 the issuance of the decision of the counselor.

10 (k) The requestor or custodian appellant shall also
11 serve a copy of the appeal upon the counselor.

12 (l) The proceedings in circuit court shall be de
13 novo.

14 (m) The counselor, once served with a copy of a
15 judicial appeal civil action, may elect to withdraw as a party
16 from the circuit court appeal or appear only as an amicus
17 curiae. The election must be made and filed within 14 days of
18 service upon the counselor.

19 (n) If no judicial appeal is filed challenging the
20 decision of the counselor, the decision of the counselor shall
21 be final and binding upon the requestor and custodian.

22 Section 12. Judicial Appeal; Enforcement; Penalties

23 (a) (1) Any requestor may enforce this act and any
24 custodian or requestor may appeal an adverse decision by the
25 counselor issued by filing a civil complaint in any of the
26 following:

1 a. A circuit court in the judicial circuit in which
2 the records in question were situated.

3 b. A circuit court in the judicial circuit in which
4 the alleged violation of this chapter occurred.

5 c. The circuit court of Montgomery County.

6 (2) A complaint by a requestor for judicial
7 enforcement or by a requestor or custodian for judicial appeal
8 of a decision by the counselor shall be filed within 30 days
9 of a written response by the custodian containing a partial or
10 total denial by the custodian or within 30 days of the
11 issuance of a written ruling by the counselor, whichever is
12 later.

13 (3) The complaint shall be verified by the
14 petitioner and shall allege with reasonable specificity the
15 circumstances of the denial of rights and privileges conferred
16 by this act or, if an appeal from an administrative decision
17 by the counselor, allege with reasonable specificity the
18 reasons the counselor's decision should be reversed.

19 (4) If the complaint alleges the wrongful
20 withholding of a public record, the complaint shall also
21 include a copy of the request for the record in controversy
22 and a copy of the response of the custodian, if a response was
23 received and any decision of the counselor, if an
24 administrative appeal was sought.

25 (5) The filing of an administrative appeal pursuant
26 to Section 11 is not a prerequisite to filing a civil action.

1 (6) If an administrative appeal was sought with the
2 counselor, the judicial appeal shall include a copy of the
3 decision of the counselor attached to the initial filing.

4 (b) The burden of proof in civil actions brought
5 under this act with regard to access to public records shall
6 rest with the custodian or governmental body seeking to
7 withhold or deny access to a requestor.

8 (c) With regard to disputes involving the amount
9 charged for accessing or taking a copy of public records,
10 subject to those charges deemed reasonable by subsection (c)
11 of Section 7, the burden of proving the charges comply with
12 this act shall be on the custodian or governmental body
13 asserting the charges.

14 (d) The circuit court shall review the matter de
15 novo regardless of whether it was filed as an appeal from the
16 decision of the counselor or as a direct action against the
17 custodian or governmental body.

18 (e) The circuit court may review any record in
19 controversy in camera. The circuit court may permit the
20 parties to engage in discovery pursuant to the Alabama Rules
21 of Civil Procedure. Discovery may not proceed without the
22 approval of the circuit court.

23 (f) The circuit court may order either party to
24 notify any private individual, private business, governmental
25 employee or governmental official whose name appears in the
26 requested records of the filing of the suit. Any entity shall
27 have standing to intervene in any suit regarding a request for

1 records to argue and present evidence for or against the
2 release of requested records.

3 (g) If the court determines that a record was
4 properly withheld under this act, the contents of the record
5 shall not be disclosed or used in any other legal proceeding
6 by any individual or attorney who attends the in camera
7 portion of the proceedings.

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

12 (i) The circuit court shall impose a civil penalty
13 against the governmental body or custodian of a record who is
14 determined to have failed to respond to a record request or
15 intentionally withheld a public record without reasonable
16 justification. Reasonable justification under this section
17 shall include, but is not limited to, a good faith reliance on
18 any currently operative law, an Opinion of the Attorney
19 General, or an advisory or formal decision of the Public
20 Access Counselor.

21 (j) The civil penalties under this section shall be:

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

25 (2) Not more than one thousand five hundred dollars
26 (\$1500) for the first violation of this act without reasonable
27 justification in the prior two-year period.

1 (3) Not more than three thousand dollars (\$3000) for
2 the second violation of this act without reasonable
3 justification in the prior two-year period.

4 (4) Not more than three thousand five hundred
5 dollars (\$3500) for each additional violation of this act
6 without reasonable justification in the prior two-year period.

7 (k) A governmental body may pay for or provide for
8 the legal expenses of the custodian of the record in a
9 proceeding initiated under this chapter, and the governmental
10 body may also pay for or reimburse any costs or fees owed to
11 the requestor under this chapter.

12 (1) One-half of all civil penalties imposed under
13 this section shall be deposited in the state General Fund for
14 the purpose of funding the office of the Public Access
15 Counselor. The remaining one-half shall be paid to the
16 requestor.

17 (m) If a requestor or custodian challenges a written
18 order of the counselor made pursuant to the administrative
19 appeal procedure established in Sections 11 and 12, the
20 circuit court may award the requestor a reasonable attorney's
21 fee and costs if it finds that the ruling of the counselor was
22 substantially affirmed. Otherwise, requests by either party
23 for the reimbursement of costs or attorneys' fees incurred
24 during proceedings initiated under Sections 11 or 12 shall be
25 governed by the Alabama Litigation Accountability Act, except
26 that the term "defense" as defined by the act shall include

1 the reason given by the custodian for withholding the record
2 in question.

3 (n) Except as to cases the court considers of
4 greater importance, proceedings initiated under this act shall
5 be given precedence over all other cases in the circuit and
6 appellate courts. All hearings, trials, and oral arguments in
7 proceedings initiated under this act shall be assigned for the
8 earliest practicable date.

9 Section 13. Immunity.

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

22 Section 14. Repeal of Open Records Act.

23 (a) Sections 36-12-40 and 36-12-41, Code of Alabama
24 1975, are repealed. All specific references in the Code of
25 Alabama 1975, to Sections 36-12-40 or 36-12-41, Code of
26 Alabama 1975, shall be considered a reference to this act.

1 (b) Any express exclusions or inclusions found in
2 the Code of Alabama 1975, in regards to the application of
3 Section 36-12-40, Code of Alabama 1975, shall apply to the new
4 sections created by this act.

5 (c) The Code Commissioner shall conform references
6 within the Code of Alabama 1975, to Sections 36-12-40 and
7 36-12-41, Code of Alabama 1975, to reflect the changes made by
8 this act. Code changes to make the required conforming changes
9 shall be made at a time determined to be appropriate by the
10 Code Commissioner.

11 (d) Nothing in this act shall be construed to repeal
12 or amend any portion of the Code of Alabama 1975, in effect on
13 the effective date of this act except as otherwise expressly
14 provided within this act.

15 Section 15. Severability.

16 The provisions of this act are severable. If any
17 part of this act is declared invalid or unconstitutional, that
18 declaration shall not affect the part which remains.

19 Section 16. Effective Date.

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