SB57

203975-1

By Senator Ward

RFD: Governmental Affairs

First Read: 04-FEB-20

PFD: 01/28/2020
SYNOPSIS: This bill would repeal existing law providing access to public records and replace it with a new Alabama Public Records Act with provisions establishing the rights of citizens to access public records, enumerating exceptions to disclosure, establishing procedures for making and responding to requests for access, setting the charges associated with responding to requests, establishing a Public Access Counselor within the Alabama Department of Examiners of Public Accounts, creating administrative and judicial remedies, and establishing civil penalties for noncompliance.

A BILL
TO BE ENTITLED
AN ACT

Relating to public records; to repeal Sections 36-12-40 and 36-12-41, Code of Alabama 1975; to establish the Alabama Public Records Act; to require governmental bodies of
this state to adopt rules allowing each citizen to inspect and
take a copy of any public record upon a request made in
accordance with this act; to require governmental bodies to
designate a custodian of records; to provide for exemptions to
disclosure; to establish special access to documents
determined to be of historical value by the State Records
Commission; to establish procedures to access public records;
to establish what charges could be assessed for access to
public records; to create the position of Public Access
Counselor within the Alabama Department of Examiners of Public
Accounts; to grant the public access counselor authority to
decide requests from custodians for additional time to comply
with records requests; to establish administrative procedures
to appeal denials of access to records; to create procedures
for judicial enforcement of public record access rights; to
create civil penalties for failing to comply with the act; and
to provide an absolute privilege and immunity for the
publication of defamatory statements or invasions of privacy
contained in records produced pursuant to a request for
access.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Name.

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

Section 2. Legislative Intent.

The Legislature finds and declares the following:
(1) All political power is inherent in the people. Thus, it is the public policy of the State of Alabama that every person is vested with the inherent right to know and be fully informed about the workings of government.

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

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

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

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

(6) The privacy interests of individuals are adequately protected in the specific exceptions to the act or in the statutes that authorize, create, or require the records.
(7) Except as may be required by other laws directly pertaining to a particular governmental record or governmental body, a governmental body shall follow the procedures required by the Alabama Public Records Act.

Section 3. Definitions.

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

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

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

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

c. Data or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental bodies, in the conduct of or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where the data,
records, or information has not been publicly released,
published, copyrighted, or patented.

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

(3) CUSTODIAN. A person designated by a governmental
agency to maintain actual possession, custody, or control of
governmental 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 governmental record. If a governmental body has not
designated a custodian pursuant to this act, the custodian
shall be the governmental official or governmental employee
having ultimate executive responsibility for any governmental
body having possession, custody or control of governmental
records.

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

(5) GOVERNMENTAL BODY or GOVERNMENTAL 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; and all quasi-judicial bodies of the executive and legislative departments of the state and all standing, special, or advisory committees or subcommittees of, or appointed by, the body. The term does not include any of the following:

a. Legislative party caucuses or coalitions.

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

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

(6) 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.

(7) 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 state, county, or municipal levels of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal levels of
government or their instrumentalities, including governmental corporations.

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

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

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

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

a. Social Security number.

b. Date of birth.

c. Weight.

d. Mother's birth name.

e. Credit or debit card account numbers.

f. Personal e-mail addresses that are not provided or hosted by or at the expense of a governmental agency.
g. Financial account numbers or data.
h. Medical examinations, treatments, or diagnoses.
i. Psychological examinations, treatments, or diagnoses.
j. Names and dates of birth of children.
k. Names and address of current or former spouse.
l. Unlisted or unpublished home telephone numbers or street number of home addresses.
m. Credit rating score.

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

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

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

(15) PUBLIC RECORD. Any of the following:
a. Any record made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. A public record includes any record that is reasonably necessary to record the business of government and which is not subject to a statutory
exemption from disclosure under Alabama law or prevented from
disclosure by an applicable federal law.

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

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

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

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

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

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

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

c. Drug and alcohol testing results.

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

Section 4. Right to Inspect and Copy Public Records.

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

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

(c) Every custodian of a record shall allow a requestor to inspect and take a copy of any public record in accordance with Section 6. Upon request, a copy of a public record shall be produced or made available to the requestor in the most economical and efficient method available. When hard copies of responsive public records are being produced and the requestor requests to receive the public records by mail, the
custodian of records shall mail the public records to the requestor using the United States mail upon prepayment of postage.

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

Section 5. Exceptions to Disclosure.

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

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

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

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

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

(4) Records that contain personal privacy information. Only portions of the records that contain
personal privacy information shall be exempt, and the portions
should be redacted from the record

(5) Scholastic records.

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

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

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

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

d. Nothing in this subdivision shall be construed to
prevent a governmental employee of a governmental body that is
subject to an internal investigation or disciplinary action
from obtaining records concerning a governmental employee to
the extent required to provide due process under the United
States Constitution.

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

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

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

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

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

c. The sex, age, or race of a victim. This shall not
include a victim of a sexual offense listed in Article 4 of
Chapter 6 of Title 13A, Code of Alabama 1975; a victim of a
stalking offense listed in Article 6 of Chapter 6 of Title
13A, Code of Alabama 1975; a victim of domestic violence or
any related offense listed in Article 7 of Chapter 6 of Title
13A, Code of Alabama 1975; or a victim of a human trafficking
offense listed in Article 8 of Chapter 6 of Title 13A, Code of Alabama 1975.

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

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

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

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

(11)a. Records gathered by a governmental body during a search to fill an employment position submitted with an expressed statement from the applicant that the application was being submitted on condition that it remains confidential. The conditions may be honored by a governmental body until the
point that the applicant is determined to be one of the top 
three candidates applying for the position. All applications 
for a position that do not expressly request confidentiality 
pursuant to this subdivision shall be public records.

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

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

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

(12) Any of the following, as they pertain to 
governmental bodies that are institutions of higher education 
and their associated foundations:
a. Records concerning the identity of donors or potential donors of a governmental body which is an institution of higher education, or their associated foundations.

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

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

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

(14) Records containing test questions, scoring keys, and other examination data pertaining to administration
of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the subject of the examination after the conducting and grading of any such examination.

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

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

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

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

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

(c) Notwithstanding any of the exemptions in subsection (a) of this section:
(1) Governmental records that are determined to be of historic value by the State Records Commission pursuant to Section 41-13-21, Code of Alabama 1975, or the Local Government Records Commission pursuant to Section 41-13-23, Code of Alabama 1975, and that are transferred to the custody of the Department of Archives and History shall be open to public inspection and use for ten years following the date they were due to be transferred, subject to such rules and regulations as to time, place, and manner as adopted by the Department of Archives and History.

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

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

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

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

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

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

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

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

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

c. As to each category of redaction or withheld records, include a citation to the specific provision of the
Code of Alabama 1975 or federal law which authorizes the custodian to redact or withhold the records.

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

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

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

   (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 identify the proper custodian of
the record if the identity of the proper custodian known to
the custodian to whom the original request was directed.

(c) A custodian or governmental body may petition
the public access counselor for additional time to respond to
a request for records when the request is for an extraordinary
volume of records and a response within the time required by
this act will prevent the custodian or the custodian's staff
from meeting operational responsibilities. 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,
providing a method for the requestor to access the requested
records, or making the source records available for search by
the requestor.

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

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

(f) Public records received or maintained by a
private individual or private business in connection with 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 such custodian. Private individuals or
private businesses having possession of records obtained 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 responsible custodian of the governmental body shall
immediately provide the records to the custodian upon request
of the custodian.

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

(h) Each governmental body having possession,
custody, or control of public records shall designate the
persons as necessary to carry out the duties of the custodian
under this act and shall ensure that a custodian, or their
designee, is available during regular business hours of the
governmental body to carry out such duties.
(i) Each governmental body, upon request of any person, shall provide the following information:

1. The principal office of the governmental body and its regular office hours.
2. The title, phone number, email address, and physical address of the custodian of the records of the governmental body and of any other governmental employee who is ordinarily available to act on record requests made at the location where public records can be viewed.
3. The usual fees, if any, charged for copies of public records.
4. The written procedures to be followed in requesting access to and obtaining copies of a public record. These procedures shall not require requests for public records to be submitted in person. If the governmental body has an official website, the procedures for requesting public records shall be made accessible to the public on the official website and at all public offices for the governmental body where public records can be requested or viewed.

Section 7. Charges for Public Records.

(a) A requestor may view a public record at no charge. For the protection of original governmental 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 governmental records. Persons may not be prohibited from using their own equipment to photograph, electronically scan, or make copies of public
records at their own expense unless such arrangements could
reasonably be expected to cause damage to original
governmental records or unreasonably disrupt the
administration of the governmental agency. Custodians are
authorized and encouraged to provide copies of public records
to requestors without charge.

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

(c) Any hard-copy or non-electronic duplicating fee
charged by a custodian or governmental body shall not
unreasonably exceed the actual cost of duplication. A charge
of twenty cents ($ .20) or less per page for copying
non-electronic records sized 8 and one-half by 11 or 14 inches
in a black and white format shall be considered a prima facie
reasonable charge unless the requestor can provide substantial
evidence that the actual cost was more than ten cents ($ .10)
less than the amount charged. A custodian may charge up to
thirty cents ($0.30) per page for two-sided copies. A charge of
seventy-five cents ($0.75) or less per page for copying
non-electronic records sized 8 and one-half by 11 or 14 inches
in a color format shall be considered a prima facie reasonable
charge 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) A custodian or governmental body may charge the
actual cost to the custodian for supplying larger sized hard
copies of public records.

(e) A public record produced from a geographical
information system shall be provided to the owner of the land
that is the subject of the request at actual cost. When a
public record produced from a geographical information system
is requested by a person who is not the owner of the subject
property, the custodian or governmental body, on a pro rata
per acre basis, may charge 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.

(f) If the charge for copies of public records 8 and
one-half by 14 inches or smaller exceeds the charges that are
deemed to be prima facie reasonable charges as set forth in
subsection (c) of Section 7, then the charge for the supplying
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. If the estimation is not communicated as required,
the custodian may not charge more than the charges set forth
in subsection (c) of Section 7 for copies of public records 8
and one-half by 14 inches or smaller.

(g) 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. The deposit shall be credited toward the final
cost of supplying the requested records. 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. If the deposit amount exceeds the
actual costs of reproduction, the requestor shall be entitled
to a refund of the remainder.

(h) 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.

(i) Unless expressly authorized otherwise 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 for the same record.

(j) 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 7. If the records are produced only in
electronic format, then the cost shall not exceed one cent
($0.01) per page.

Section 8. Electronic Data.

(a) A custodian or governmental body shall produce
public records maintained in an electronic database in any
tangible medium identified by the requestor if the request
output is within the capabilities of the software system used
by the custodian or governmental body. This 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. A
custodian or governmental body shall not be required to
produce records from an electronic database in a format not
within the capability of the software used by the custodian or
governmental body.
(b) A custodian or governmental body shall make reasonable efforts to provide records in any format within the capability of the software utilized by the custodian or governmental body under the terms and conditions as agreed with the requestor, including the payment of reasonable costs, or to provide a method for the requestor to access the requested records or make the source records available for search by the requestor.

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

(d) 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 such as, but not limited to, portable data format, comma separated values, or the American Standard Code for Information Interchange.

(e) A governmental agency shall 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.

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

Section 9. Suggested Forms.

(a) A governmental body shall make available online
and upon written 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).
Requestor Signature: __________________________
Print Name: __________________________________
Received By:
Name: _______________________________
Signature: ____________________________
(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
___ Mail
___ 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(s) is/are 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(s) is/are 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 14 day period.

Responder must cite conditions that make response impossible. If response is made within 14 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(s) do not exist.

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

Determination/Response made by:

Print Name and Title: ______________________

Signature: _______________________


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

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

(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 this act and educational materials concerning this act.

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

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

(6) To issue advisory opinions to interpret this act upon the request of a requestor of records. The counselor shall confer with the Attorney General, prior to issuance of any advisory opinions, about such requests but is not bound to follow any written or informal opinion issued by the Attorney General. The counselor may not issue an advisory opinion concerning a specific matter with respect to which an administrative appeal or lawsuit is pending.
(7) The counselor may issue formal administrative findings relating to disputes between requestors and governmental bodies or governmental agencies concerning requests for records.

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

(c)(1) A custodian or governmental body petitioning for an extension of time to respond pursuant to subsection (c) of Section 6 shall attach to the request 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 to the request for more time without requiring a response from the requestor.

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

Section 11. Administrative Appeals to the Public Records Counselor.

(a) A requestor denied the right to inspect or copy records by a custodian may appeal to the Public Access
Counselor by filing a notice of administrative appeal to the counsel.

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

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

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

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

(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.

(d) Within five business days of receipt of a properly documented administrative 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.

(e) 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) Copies of a representative sample of the
records requested without any redaction. Copies of these
unredacted 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.

(f) 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.

(g) 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 judicial appeal is
filed as set forth in this section.

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

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

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

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

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

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

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

Section 12. Judicial Appeal; Enforcement; Penalties

(a)(1) Any requestor may enforce this act and any custodian or requestor may appeal an adverse decision by the counselor issued by filing a civil complaint in any of the following:
a. A circuit court in the judicial circuit in which the records in question were situated.

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

c. The circuit court of Montgomery County.

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

(3) The complaint shall be verified by the petitioner 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 counselor’s decision should be reversed.

(4) 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 and 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.

(5) The filing of an administrative appeal pursuant to Section 11 is not a prerequisite to filing a civil action.
(6) If an administrative appeal was sought with the counselor, the judicial appeal shall include a copy of the decision of the counselor attached to the initial filing.

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

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

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

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

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

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

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

(i) The circuit court shall impose a civil penalty
against the governmental body or 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. Reasonable justification under this section
shall include, but is not limited to, a good faith reliance on
any currently operative law, an Opinion of the Attorney
General, or an advisory or formal decision of the Public
Access Counselor.

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

(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
($1500) for the first violation of this act without reasonable
justification in the prior two-year period.
(3) Not more than three thousand dollars ($3000) for
the second violation of this act without reasonable
justification in the prior two-year period.

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

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

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

(m) If a requestor or custodian challenges a written
order of the counselor made pursuant to the administrative
appeal procedure established in Sections 11 and 12, the
circuit court may award the requestor a reasonable attorney’s
fee and costs if it finds that the ruling of the counselor was
substantially affirmed. Otherwise, requests by either party
for the reimbursement of costs or attorneys’ fees incurred
during proceedings initiated under Sections 11 or 12 shall be
governed by the Alabama Litigation Accountability Act, except
that the term “defense” as defined by the act shall include
the reason given by the custodian for withholding the record
in question.

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

Section 13. Immunity.

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 to
a requestor, or gives an informal or formal opinion that the
records be produced, shall have an absolute immunity from
civil or criminal 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.


(a) Sections 36-12-40 and 36-12-41, Code of Alabama
1975, are repealed. All specific references in the Code of
Alabama 1975, to Sections 36-12-40 or 36-12-41, Code of
Alabama 1975, shall be considered a reference to this act.
(b) Any express exclusions or inclusions found in the Code of Alabama 1975, in regards to the application of Section 36-12-40, Code of Alabama 1975, shall apply to the new sections created by this act.

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

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

Section 15. Severability.

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

Section 16. Effective Date.

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.