



## Georgia First Amendment Foundation Publishes Updated Guide to the State's Open Meetings and Records Laws

R. Michael Barry and Ryan Kerr

The Georgia First Amendment Foundation, in cooperation with Georgia's Office of the Attorney General, has published an updated edition of its Red Book, *Sunshine Laws: A Guide to Open Government in Georgia* (the "Red Book"). The Redbook is a resource for individuals interested in reviewing public records and attending public meetings. Through the Open Meetings Act<sup>1</sup> and the Open Records Act<sup>2</sup> (collectively, the "Sunshine Acts"), Georgia law provides that the meetings and records of governmental bodies are open to the public for review and attendance. The Sunshine Acts apply to records and meetings of all entities that are "agencies" of state and local governments. The term "agency" is defined broadly and includes certain healthcare providers such as hospital authorities and others. In some instances, nonprofit corporations operating hospitals pursuant to lease agreements with hospital authorities may also be subject to these laws.<sup>3</sup>

### Requirements of Georgia's Open Meetings Act

If the Open Meetings Act applies to an entity, then most of that entity's meetings must be open to the public. This generally means that notice of the meeting must be properly posted and published and that the public must be allowed to attend any meeting where a quorum of the members of the entity's governing body meet to discuss or present official business. Meetings conducted via teleconference or through other electronic means and meetings of committees where policies or official business are discussed are also subject to the Open Meetings Act.

There are, however, several exceptions allowing an entity to conduct a closed meeting or session of a meeting. Closing a meeting or session requires an affirmative majority vote made at a duly noticed and open meeting of the entity. The entity must state the specific reasons for closing the meeting in its official minutes and the presiding person must execute an affidavit that the meeting or session was devoted to a matter excepted under the law. If a meeting or portion of a meeting is closed, then the entity is required to keep minutes of the closed meeting or session. Common exceptions to the open meeting requirements include certain discussions and deliberation of personnel matters, privileged discussions of actual or threatened lawsuits or claims, medical staff committee meetings, peer review meetings, and meetings granting, restricting, or revoking medical staff privileges.

### Requirements of Georgia's Open Records Act

Entities that are deemed "agencies" under the Open Records Act must provide the public with access to certain records and documents unless the law provides an exception to such access. The public has a right to see, inspect, and copy all "public records," which include, but are not limited to, documents, papers, letters, books, tapes, data, and other similar material prepared and maintained or received by the entity. Public records include those that are computer-based or computer-generated. Records that are (i) prepared, maintained, or received by a private person or entity performing services on behalf of an agency or (ii) transferred to a private person or entity by an agency for storage or future use are also subject to the Open Records Act.

<sup>1</sup> O.C.G.A. § 50-14-1.

<sup>2</sup> O.C.G.A. § 50-18-70.

<sup>3</sup> See *Northwest Georgia Health System, Inc. v. Times-Journal, Inc.*, 218 Ga.App. 336 (Ga.App., 1995).

Common exceptions to the Open Records Act include certain qualifying records that are deemed confidential under the law, medical records, or other documents with sensitive personal information, protected by a court order, or related to real estate valuation and acquisition. Documents that are attorney-client privileged, or certain documents that are attorney work product, including those related to a hospital authority's compliance with federal or state law, regulations, and reimbursement policies, may also be exempt from disclosure.

Entities that are subject to the Open Records Act must, upon a proper request, disclose those documents responsive to the request for inspection within a reasonable amount of time not to exceed three business days of receiving the request. However, if responsive documents exist but are unavailable, then the entity must provide the requesting party with a description of the available records and a timetable for their inspection.

If the entity denies the requesting party access to a record or part of a record, then the entity must provide a written response citing the specific legal authority exempting the record from disclosure. Entities may charge a reasonable fee for searching, retrieving, and redacting requested documents.

### **Penalties for Violations of the Sunshine Acts**

If an agency conducts a closed meeting when the meeting should have been open to the public, then the actions taken at the meeting are not binding. Such actions may be set aside if an action to do so is made within 90 days of the contested action or, under certain circumstances, within 90 days from the date when the contesting party knew or should have known of the action. Furthermore, anyone who "knowingly and willfully" conducts or participates in a meeting without complying with the Open Meetings Act or fails or refuses to provide timely access to records governed by the Open Records Act may be subject to criminal prosecution or civil fines as well as other penalties.

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