Georgia's Open Meetings and Open Records Laws

A Guide for County Officials

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ACCG

Advancing Georgia's Counties.

🕮 OPEN RECORDS LAW

Public Policy on Government Records

Public policy of the state strongly favors open government. Open government is essential to a free, open, and democratic society. Public access to public records is encouraged to foster confidence in government. It allows the public to evaluate how public funds are spent. It also allows the public to evaluate the efficient and proper functioning of its governments.

In Georgia, there is a strong presumption that public records should be made available for public inspection without delay. The open records law is broadly construed to allow the inspection of governmental records. The exceptions provided in the open records law, together with any other exception located elsewhere in the law, must be interpreted narrowly to exclude only those portions of records addressed by the exception.[78]

🕮 GENERAL REQUIREMENTS OF THE OPEN RECORDS LAW

Right to Personally Inspect, Copy or Photograph Open Records

All public records of the county or other agency must be open for personal inspection and copying by the general public except those records that are required to be kept confidential by an order of a Georgia court or those records that are exempted from being open to inspection by law.[79] At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection.

The county may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.[80]

How does a county comply with the open records law?

- Open records requests may be made orally or in writing. A county may require that written requests be made to a particular person or persons designated by the county.
- Upon receiving an open records request, the person in charge of the records (i.e., the chair or executive officer, department head, clerk specifically designated by a county as the custodian of the records or designated open records custodian) should first determine whether the county has documents that are responsive to the request (i.e., do the requested documents exist and were they prepared, maintained or received in the course of operating the county?).
- If the county has documents responsive to the request, then the person in charge of the records must determine whether the documents fall within any of the exceptions to the open records law. If there is any uncertainty, the county attorney should be consulted immediately. See Appendix H of this handbook for a summary of exemptions found in O.C.G.A. § 50-18-72 and other statutes restricting the release of the documents.
- If the records are exempt, the county must accurately identify all relevant provisions in law that allow or require the records to be considered confidential and not subject to disclosure.

- Within three business days of receiving the request, the county must provide the requested records or notify the requestor, preferably in writing, as to whether the requested documents are public documents subject to disclosure or are exempt. If the county has designated an open records custodian, the three-day period begins when that person (or their alternate if they are absent) receives the request. If the county has not designated an open records custodian, the three-day period begins when the county receives the request.[81]

- If the requested records are readily available, the county must provide copies of or access to the requested documents within the three-day period.[82]

- If the records are subject to disclosure but not readily available, the person in charge of the records must provide a description of the requested documents and a timetable for their release to the requesting party. The description and timetable must be provided within the three day period following receipt of the request.

- If the county intends to seek reimbursement for the costs of search, retrieval and copying of the requested records as allowed by O.C.G.A. § 50-18-71(d), the county must provide an estimate of the charges if the charge is greater than $25, preferably in writing, to the requestor before fulfilling the request. Again, the estimate must be provided to the requestor within the three-day period. If the charge is greater than $500, the county may require the requestor to pre-pay.

- Failure to affirmatively respond to an open records request within three business days as outlined above constitutes a violation of the open records law.

What if a citizen requests documents, but does not mention the open records law? Or requests the documents under the Freedom of Information Act?
In either instance, although the open records law was not specifically invoked, the request should be treated as an open records request and handled accordingly.

Does an open records request have to be in writing?
No. The county may not require that an open records request be in writing. The county can, however, require that all written requests be made to a designated person. Also, only requests made in writing are subject to criminal and civil enforcement. Counties can facilitate the making of records requests in writing, by providing simple forms for use by requestors and suggesting submittal of written requests by fax, e-mail, regular mail or by submitting a request in person.[83]

Can a county restrict access to public records to times when an employee is present to monitor the inspection?
Yes. However, every effort should be made to accommodate the requestor.

May a county allow a requester to review requested records, but refuse to allow him or her to make copies of the records?
No. The law gives citizens the right to both inspect and to make copies of open records.

Can the county stop a requestor from bringing a scanner or other device to record the image of a document or record?
No. So long as the scanner or device does not unreasonably interfere with the operation of the county, a requestor may bring a scanner or other device to record county records. However, the county may want to post a notice that some records may be copyright protected and that the requestor records them at his or her own risk.

Must a county fax a public record, if requested by a citizen?
Yes. The law requires the county to use the most economical means to produce the records.[84]

Can a reporter demand immediate access to a particular file?
While all records, except those exempted in O.C.G.A. § 50-18-72 or elsewhere, must be made available for inspection, counties may impose reasonable conditions as to times and places that the records may be viewed. At the very least, counties have three business days to determine if the records are subject to disclosure and, if available, to provide access to or copies of the records. If the records exist and are subject to disclosure, but cannot be made available within three business days of the request, the county must provide a written description of the records with a timetable for their inspection and copying.[85]

Does a county have to respond to an open records request made by an out of state resident who does not own property in the county?
Yes.

May a county require the name of the person requesting documents before providing access to documents?
No.

May a county require the reason for a records request before providing access to the documents?
No.

Who gets to decide whether a requestor gets copies of records or gets to inspect the original records?
In general, it is up to the requestor to decide. One exception is an open record that contains information that must be kept confidential. (See the section on exempt records for more information.) In such a case, the county can make a copy, redact the confidential information, and allow the requestor to review the redacted copy.

If a citizen repeatedly makes voluminous open records requests but never picks up or pays the copying and administrative charges, can the county refuse to respond to future open records requests?
No. The county may not refuse to respond to an open records request, but it may require prepayment for future records requests by requesters that have not paid prior costs. Additionally, as long as the county provides notification of the estimated copying charges discussed in O.C.G.A. § 50-18-71(c)(3)(d), the county may enforce collection of the copying and administrative expenses incurred regardless of whether the citizen retrieves the copies.

Agencies Subject to the Open Records Law

The open records law applies to the same "agencies" and "public offices" as the open meetings law. It also applies to any association, corporation, or other similar organization that: has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.[86]

Who is subject to the open records law?
Counties, consolidated governments, cities and authorities are subject to the open records law. Essentially the same agencies that are subject to the open meetings law are subject to the open records law. For more information on the agencies subject to the open meetings law requirements, see the open meetings section. Additionally, any organization that is made up of, and receives 33 1/3 percent of its operating budget from counties, cities or school districts is subject to the requirements of the open records law.

What are examples of "agencies," "public agencies" and "public offices" subject to the open records law?
Similar to the open meetings law, the board of commissioners, the tax commissioner, the sheriff, the district attorney, the clerk of court, the planning commission, the board of zoning appeals, the personnel review board, the merit board, the board of tax assessors, the board of tax equalization, the board of health, the housing authority, the hospital authority, the development authority, the recreation commission, the regional commission, the airport authority, and the water and sewer authority are covered by the open records law among others. Additionally, the Association County Commissioners of Georgia and the Georgia Municipal Association must comply with the open records law, as well as other local government associations such as the Georgia Sheriffs' Association and the Georgia School Boards Association.

What Are "Public Records" That Must Be Released

"Public record" means documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by a county or other agency or by a private person or entity performing a service or function for or on behalf of the county or other agency. "Public records" are also those documents that have been transferred to a private person or entity by the county or other agency for storage or future governmental use.[87]

While an original exhibit tendered to a court as evidence in a criminal or civil trial is not open to public inspection without approval of the judge assigned to the case, copies of exhibits are open records in most cases. Except for physical evidence used as an exhibit in a criminal or civil trial relating to certain offenses related to minors, if the court does not allow inspection of the actual exhibit, the records custodian must provide a photograph, photocopy, facsimile, or other reproduction of the trial exhibit.[88]

Are messages e-mailed on county computers "public records" subject to disclosure?
Yes. All e-mails are considered public records. Be aware that "deleted" e-mails can oftentimes be retrieved and would be considered public documents as well.

Is e-mail sent from a commissioner's or employee's private e-mail account subject to disclosure?
Regardless as to whether the e-mail was sent from a county issued e-mail account or a personal account, if the information contained within the e-mail pertains to county business and does not fall under an exemption to the open records law then it must be released.

What if the e-mail was sent from a personal computer?
It does not matter if the e-mail was sent from a county issued computer or a personal computer, if the e-mail is work related and does not fall under an exemption, it is subject to the open records law.

Are messages on a county issued smart phone, cell phone or other wireless hand held device subject to the open records law?
Yes. Unless a particular e-mail falls under an exemption to the open records law in O.C.G.A. § 50-18-72 or some other statute, all e-mails on a county issued blackberry, smart phone, cell phone or computer must be released. Messages that are sent through an electronic medium usually create a record that is stored in the server of the county's computer system or hard drive of the electronic device.

Can a county employee get around the open records law if they purchase a phone and get reimbursed by the county for the monthly bills?
No. Any work related records, as well as the employee's monthly bills, must be disclosed if requested unless the records falls under an exception to the open records law. For instance, the portions of the monthly bill that contain account numbers would be exempt. However, the rest of the bill would have to be disclosed. Likewise, e-mails, texts and other messages related to county business would be subject to release.

Does a county employee have to disclose messages on their personal smartphone, cell phone or other wireless hand held device if they do not receive reimbursement from the county?
If the message was sent or received in relation to county business, then it must be released unless it falls under an exception to the open records law or some other statute. It does not matter if the message was sent through a county issued or personal device as long as the message is related to county business.

Can the information that a county employee sends through "instant messaging" on their computer be subjected to an open records request?
Yes. Just like e-mail, there is a record of the information that is sent through instant messaging. An instant message can be subject to a request if it relates to county business, unless the information is exempted from the open records law.

Are voicemails that are converted to a WAV file and delivered as e-mail to an employee's computer subject to the open records law?
If there is a record of the voicemail, regardless if it is a WAV file, tape, or other medium, it is treated just like any other record and would be subject to disclosure absent an exemption to the open records law.

Are calendars an open record?
A paper or electronic calendar kept on county equipment is a record subject to disclosure. Similarly, portions of a personal calendar containing appointments related to county business may be subject to disclosure, as well.

Is information posted on or through the county's social networking site (e.g., Facebook, Twitter, etc.) subject to the open records law?
Yes. It is treated just like any other written record and would be subject to disclosure absent an exemption to the open records law.

What are "cookies" and how should a county respond to a request for this type of information?
"Cookies" are information downloaded to a computer when a website is accessed. This information should be treated just like any other type of record and should be subject to disclosure absent an exemption to the open records law.

Are all contracts open records?
Any contract involving the county or other agency is an open record that must be disclosed. However, portions of the contract may be redacted if it falls within one of the exemptions authorized by law, but the non-exempt portions of the contract must be released. A discussion of exemptions to the open records law is provided later in this guide.

If a document such as an ordinance or contract is still in "draft" form, must it be provided if a citizen requests it?
Yes.

Do reports, evaluations, recommendations, etc., prepared by consultants for the county have to be released under the open records law?
Yes.

Does the county have to release documents that may be embarrassing?
Yes. If the documents relates to county business and does not fall under the open records law exemptions, then it must be released.

Must a county provide requested data that is only available in an electronic format?
Yes. If the requested information does not fall within one of the exemptions contained in O.C.G.A. § 50-18-72 or some other statute requiring the records to remain confidential, then the county should do one of the following: (1) copy it onto electronic media for the requestor; (2) allow the requestor to review the

information on the county's computer system; or (3) send the requested records via e-mail, if it is available and practicable.[89]

Can a county send documents to the county attorney to avoid producing them in response to an open records request?
No. Records do not become "confidential" merely by sending them to the county attorney's office. Only if the documents are subject to the attorney-client privilege or the attorney work product privilege, pursuant to O.C.G.A. § 50-18-72(a)(41) or some other exception to the open records law, are they exempt from disclosure.

If a county official has county records at his or her home or office, are those records still subject to disclosure?
Yes. A public record that does not fall within an exception to the open records law is subject to disclosure, even if it is located in a county official's home or office.

Are handwritten notes on a "scratch" piece of paper made by a county commissioner or employee a "public record"?
Unless the notes are on a subject exempt from the open records law in O.C.G.A. § 50-18-72 or other statute, handwritten notes would be considered public records.

What if a citizen makes a request for documents that the county does not have?
The citizen must be notified, preferably in writing, within three business days of making the request, that there are no documents responsive to the request.

May a citizen make a request for copies of the minutes of all future meetings of the board of commissioners?
No. There is no requirement that counties must produce records that did not exist at the time of the request.[90]

How long must records prepared, maintained, or received by a county be retained?
The open records law does not specify how long county records should be retained. However, O.C.G.A. § 50-18-99 requires the county to keep its records according to the records management program adopted by the board of commissioners. If the county has not adopted such a schedule, then they are required to comply with the one established by the State Records Committee.[91] Some records are required to be kept permanently, such as minutes, agendas, maps, plats, annual financial statements, franchise documents, annual and ad hoc narrative reports, right of way deeds, easements, emergency relief records, federal and state final grant reports, historic preservation files, aerial photography and other photographs of county property and functions, standard operating procedures, newsletters and brochures published by the county, resolutions, ordinances, right of way agreements, speeches, audit reports, final budgets, attorney's opinions, employee handbooks, employee retirement plans, employee salary schedules, blue prints and specifications of county-owned buildings, records schedules, building codes, precinct boundary changes, precinct boundary files, racial breakdown of electors, voter registration cards for active voters, voting procedures change preclearance files, building permit applications and permits, permanent sign permits, planning studies and reports, zoning variance applications, accident reports, county road maintenance dockets, subdivision plats, board of equalization appeals, millage rate resolutions, real property index cards, tax sale files, etc.[92] The Archives Division of the Secretary of State's Office provides assistance to local governments on the length of time that specific documents must legally be maintained. For more information on county records management requirements, see Appendix F.

Are trial exhibits subject to open records?
While the original exhibit is not subject to release without approval of the court, a copy, facsimile or photograph of the exhibit may be required to be made in order to provide the public access to most trial exhibits.

Are the real estate records in the superior court clerk's office subject to the open records law?
Yes. Any computerized index of county real estate deed records must be printed for purposes of public inspection no less than every 30 days and any correction made on such index must be made a part of the printout and must reflect the time and date that the index was corrected.[93]

If an individual sues the county, may he or she obtain documents relevant to the case through the open records law rather than pursuant to the Civil Practice Act?
Generally, unless some other exemption applies, an individual suing the county may get public records through the open records law. However, a copy of the request and responding documents must also be provided to the county attorney.[94]

Open Records Officer/Custodian

The terms "records officer'" and "records custodian" are used interchangeably throughout the open records law. For purposes of this guide, the term "records custodian" will be used. It should be noted, however, that the records custodian referenced in the open records law has different responsibilities than the records custodian established by counties for record retention and management purposes.[95]

Counties may designate one or more open records custodians to whom requests for inspection or copying of records may be delivered. If a county decides to designate an open records custodian, they must notify the legal organ of the county and display this information in a prominent place on their website, if available.[96] Additionally, a decision needs to be made by the county commission on which county departments and offices should be covered by the designated open records custodian(s). For a sample resolution on designating an open records custodian, see Appendix B.

Who can the county designate as a records custodian?
The records custodian can be the chair, chief executive, department head, clerk or other designated county employee.[97]

If a county has already designated a records custodian in accordance with the records retention law,[98] is there a need to designate a records custodian under the open records law?
Georgia's record retention law requires every county to designate a records custodian for record management purposes by ordinance or resolution. The open records law gives counties the option of designating a records custodian in writing for the purpose of responding to open records requests. Therefore, if a county previously adopted a resolution designating a records custodian and that custodian was given the authority to respond to open records requests than there is probably no need for a subsequent designation. However, if the original designation for the records custodian did not include language that authorized the custodian to perform duties beyond record retention and maintenance, than a new designation may be appropriate. It should be further noted that if it is determined that the county does not need a subsequent designation, the name of the records custodian must still be provided to the legal organ of the county and this information must be displayed in a prominent place on their website, if available.

Can a county require that all open records requests should be directed to the designated records custodian?
While a county cannot require that all requests be in writing, the county can specify that, if a written request is made, that it must be made to the records custodian.[99] However, a verbal request may be made to any county official or staff.

Why would a county want to designate a records custodian?
Unless records custodians are appointed, every person who has or maintains public records is considered a custodian of those records. By appointing an official records custodian, a county can more effectively manage it's duties under the open records law. In particular, where requests are submitted in writing, the three-day response period does not begin until the custodian receives the request. Another benefit is that specialized training can be provided to records custodians so that errors and potential liability for failing to properly respond can be avoided

How should a county designate a records custodian?
The records custodian must be designated in writing by the county, the legal organ of the county must be notified, and the name of the custodian must be posted on the county's website, if available.

If the designated records custodian is not in the office when a records request is submitted does that mean that the three day period starts when they return?
No. The absence or unavailability of the designated records custodian cannot delay the county's response. It is recommended that the county provide for an alternate custodian or create a policy on how to respond when the primary designated records custodian is unavailable in order to respond to requests within the three day period.[100]

Duty to Use Economical Means of Providing Copies

The county must utilize the most economical means available for providing copies of public records.[101]

If a large document can be transferred by e-mail to the requestor at a low cost, can a county instead insist on making hard copies, which may cost substantially more?
No. The more economical method of copying should be employed unless the individual requests a hard copy.

How should a county respond to an extremely broad request (e.g., to provide copies of any and all documents relating to the purchase of materials, equipment and supplies by the county; to review and copy any correspondence to or from the county administrator; to review and copy every contract to which the county is a party)?
If requested documents cannot be made available within the three business day time period, then the county must provide a written description of the documents and a timetable for their release. Oftentimes, a requesting party is unaware that their request is so broad and would prefer to narrow the scope and reduce the cost of the request. In order to respond to an overbroad inquiry in the most economical manner, the county should contact the requestor as soon as possible within the three day period to ask the party making the inquiry to be more specific (e.g., does the party want every contract since the formation of the county or just those in the past three years; is there a particular subject area in which the party is interested; etc.). Since the inquiring party is not required to provide this information, the county must still be prepared to provide in writing, within three business days, an estimate of the amount of time that it would take to respond to the request, the salary of the lowest paid person capable of responding to the request, and the potential number of documents to respond to the request as originally stated.

Electronic Access to Records

The county's use of electronic record-keeping systems must not erode the public's right of access to records. Counties must produce electronic copies, printouts of electronic records, or data from the county's data base fields at the option of the requestor. The county must not refuse to produce electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into the county's computer system so long as such commands or instructions can be executed using existing computer programs that the county uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be

produced in the format in which the data or electronic records are kept by the county, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the county's existing computer programs support that format. The data or electronic records must be downloaded in that format onto suitable electronic media by the county.[102]

If a request for county records is received by e-mail, must it be treated as an open records request?
Yes. It is considered a request in writing and is subject to the same requirements as any other open records request.

Is a county required to provide requested documents through e-mail if requested by a citizen?
If the documents are available in electronic format and are subject to disclosure, the county must send the documents via e-mail. If the county only has the records in a hard copy (i.e., paper) and does not have the capability of scanning the records into an electronic format, then the county is not required to provide the documents through e-mail. However, in such a case, the county would still be required to provide the requestor the opportunity to review and copy the records.

How should requests to inspect or copy electronic messages be made?
The request should contain information about the messages being sought that allows the county to locate those messages, including, if known, the name, title, or office of the specific person or persons whose electronic messages are being sought and, to the extent possible, the specific databases to be searched for those messages.[103] For the purposes of the open records law, electronic messages includes e-mails, text messages, and any other format for which an electronic message may be received.

If a county receives a request for data or records from its database, is the county required to run a search?
Yes. Counties cannot refuse to produce electronic records, data, or data fields on the grounds that exporting data or redaction of exempted data will require inputting range, search, filter, report parameters, or similar commands or instructions into the computer system or database.[104]

If the county retains requested information in an Excel spreadsheet, can they provide the requested information in a PDF if the requestor asked for it to be provided in Excel?
No. A requestor may request that electronic records, data, and data fields be produced in the format in which the data or records are kept by the county. In this case, since the county maintains the data or records in Excel, it must provide the information in Excel if specified by the requestor. Alternatively, the requestor could have specified the information in a standard export format in which case the data or records are to be downloaded in that format onto suitable electronic media by the county. The county must comply with the format requested, if the county's existing computer programs support the export format.[105]

Is a county required to create and maintain a website to provide electronic access to county records?
No. However, a county may wish to consider placing many of its commonly requested documents (e.g., minutes, ordinances, resolutions, budgets, audits, policies, etc.) on a website to provide easier access to the public, as well as to potentially reduce the amount of staff time expended responding to such requests. Caution should be using in choosing the format for records made available through the county website. Records made available online should be posted in a PDF or read-only format that prevents the user from being able to change the content. It should be noted, however, that if a request is made to the county for an electronic document in the format that the document is kept by the county and the document is available in that format, then the county is required to provide the record to the requestor in that format.[106]

Access to E-mail, Texts and Other Electronic Messages

Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the county to locate the messages sought. The request should include the name, title, or office of the specific person or persons whose electronic messages are sought, if known, and, to the extent possible, the specific data bases to be searched for such messages.[107]

Can a request be made for any and all e-mails about a new subdivision built in the county?
Yes. However, requestors should include the names or positions of the individuals whose e-mail records (i.e., the board of commissioners, members of the subdivision review committee, the county manager, the county clerk, the county engineer, the public works director, the road superintendent, etc.) should be searched or the particular databases that should be searched (i.e., the appraisal department, the tax commissioner's office, the building department, the planning and zoning office, the road department, etc.). If the request does not specify whose e-mail accounts are to be searched, the county should contact the requestor as soon as possible and ask for the request to be narrowed while advising the requestor of the higher cost of retrieval if not narrowed down.

If a county manager receives an open records request for e-mails related to a particular issue that were deleted when he cleaned out his inbox the previous day, is there an issue?
Possibly. County officials and employees may only delete e-mails in accordance with the county's record retention schedule. County governments are required to have a records management program that includes the length of time each type of record must be kept.[108] It is very important that counties have adopted a schedule for how long different types of e-mail messages are kept. If the county has not adopted such a schedule, then they are required to comply with the one established by the State Records Committee.[109] This schedule requires that e-mails be stored according to the type of e-mail. Transitory e-mails (i.e., messages of short-term interest with no documentary or evidential value) must be kept for their useful life. Administrative support e-mails (i.e., messages of a facilitative nature created or received in the course of administering programs) may be kept for a short term. Policy and program e-mails (i.e., messages that document the formulation and adoption of policies and procedures and the management of the county) must be kept on a long-term basis.

What if the county manager deliberately deleted emails to prevent disclosure?
Destruction of records for the purpose of preventing their disclosure is a felony punishable by two to ten years in a state prison.[110]

Time Limit for Responding to a Request and Producing Available Records

The county must produce all records responsive to a request for inspection within a reasonable amount of time not to exceed three business days of receipt of a request. In counties that have designated an open records custodian, the three day period begins to toll once that custodian has received the request. It should be noted that the absence or unavailability of the designated open records custodian is not an excuse to postpone responding to the request. As such, the county should have an alternate records custodian or create a policy on how to handle these requests in their absence in order to meet the three day deadline. When some, but not all, records are available within three business days, the county must provide the records that can be located and produced. When records are unavailable within three business days of receipt of the request, the county must provide the requester during the three business days following the request with a description of those records and a timeline for when the records will be available for inspection or copying. The county must provide the responsive records or access thereto as soon as practicable.[111]

A newspaper demands that a county produce requested records within three days of the request. Must the county comply?
Yes, if the records are readily available and are not subject to any exceptions to the open records law, then the county must at least provide access to the documents and permit the newspaper to make copies within three business days of the request.

Note, however, that the law also allows the county to estimate the cost of providing records and to notify the requestor prior to providing them if the estimated cost is greater than $25. Therefore the county may also respond within the three day period by acknowledging that the records are available, but specifying the cost of accommodating the request.

A request for records is sent to the planning department but is forwarded to the county engineer because he is the designated open records custodian of the requested records. Does the three business day time period begin to run on the date that the request is received by the planning department or the date received by the engineering department?
The three business day time period begins when the designated records custodian receives the request. In this example, it starts to run when the county engineer receives the request. It should be noted that a county employee or official knowingly sending the request to the wrong department or person in order to delay the request may be punishable by civil or criminal penalties.[112]

If the files containing the requested records are stored off site, does the county still have to provide access within three business days?
If the requested documents are not available within three business days, the county may provide a written description of the documents to the requesting party within the three day time period that includes a timetable establishing when the documents will be available. However, if the documents are readily available, even though stored off site, then the county must provide access within the three days.

What if the request for records is voluminous?
If the request for documents is so large that it is not possible to locate or copy the records within the three business days, the county must, within three business days, provide a written description of the documents with a timetable establishing when the documents will be available to the requesting party.

What if the requested documents are exempted by the open records law?
Within three business days of receiving the request, the county must notify the individual requesting the documents of the exact and correct code section, subsection and paragraph in the law that exempts the documents from the open records law.[113]

What if it is not clear whether the requested document is subject to the open records law?
The county attorney should be consulted immediately. If it remains uncertain whether a document falls into an exception to the open records law, the county has three days to obtain an order from superior court staying or refusing the release of the document.

Although not required by law, in many instances, the requestor may be willing to accept a reasonable delay in releasing documents to allow the county to make a final determination. However, it would be up to the requesting party to decide whether or not a delay would be acceptable or for how long.

May a county merely send a letter acknowledging receipt of an open records request within three days?
No. The law requires that the records custodian determine whether the records are open to the public and provide access to the records, if they are available, within the three day period. Merely acknowledging receipt of an open records request is not sufficient to meet the requirement of the law.

Responding to Requests for Records That Are Exempt from the Open Records Law

If the county is required to or has decided to withhold all or part of a requested record, it must notify the requester of the specific legal authority exempting the requested record or records

from disclosure by code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days. In the event that the search and retrieval of records is delayed, then the specific legal authority must be provided no later than three business days after the records have been retrieved.[114]

How long does the county have to determine whether the requested records are subject to release under the open records law?
The county has up to three business days to determine whether the records fall within one of the exceptions to the open records law, as well as to provide the records, if available.

Does a county have to identify the exemption that applies to requested records?
Yes. Within three business days of the request, the county must identify or designate any and all exemptions to the open records law that actually apply to the documents requested. The designation must include the code section, the subsection and paragraph number of the legal authority exempting the records from the open records law.

How does a records custodian properly specify the appropriate exemption?
The records custodian must cite the reference to the Official Code of Georgia Annotated (O.C.G.A.) that provides the legal authority for denying a member of the public access to information. For instance, if the record requested is a real estate appraisal on property that the commissioners are considering purchasing, the legal authority for denying access to the appraisal is O.C.G.A. § 50-18-72(a)(9). "50-18-72" is the code section, "(a)" is the subsection, and "(9)" is the paragraph.

How does the records custodian know which exemption and code section, subsection and paragraph number applies to the requested documents?
Most of the exemptions are contained in section (a) of O.C.G.A. § 50-18-72. However, there may be other places in the law that exempt records from disclosure. Examples include the exemption regarding use of elector lists is found in O.C.G.A. § 21-2-225; the exemption protecting the name of a rape victim is found in O.C.G.A. § 16-6-23; the exemption restricting access to wills is found in O.C.G.A. § 15-9-38; the exemption for cable and video service provider financial information is found in O.C.G.A. § 36-76-6(d), etc. A list of exemptions found in Georgia law is contained in Appendix H of this guide. If there is any uncertainty about whether an exemption applies, the county attorney should immediately be consulted.

What happens if an open records request is made for documents containing materials that are exempt and the records custodian incorrectly cites the code section, subsection or paragraph?
While the law does not prohibit amending a response if the county catches and wishes to correct a mistake, it is important to be sure all exemptions are listed correctly in the response. Any uncertain exemptions should be verified by the county attorney.

What should a county official do if it is not clear whether a document is covered by an exception to the open records law?
The county attorney should be consulted. Note, however, that the Georgia Supreme Court has repeatedly determined that, whenever there is doubt as to whether a record should be open or confidential, the Court is likely to rule that it is an open record (see *Hardaway Company v. Rives*, Appendix D).

If a reporter requests a document containing sensitive information that is clearly open to the public and does not meet any open records exceptions, can the board of commissioners deny the request if the document is available from another source?
No. If a record is open to the public, it does not matter whether the reporter can obtain the information from another agency or another source.

When Only a Portion of a Record Falls Within an Exemption

Exemptions to the open records law must be interpreted narrowly. Only the portion of a public record to which an exemption is directly applicable may be excluded. It is the duty of the county to provide all other portions of a record for public inspection or copying.[115]

What if a portion of a document falls under an exception to the open records law?
The document must be released without the confidential information. The county should make a copy of the document and redact (i.e., mark out), any confidential information prior to releasing the document. The county is permitted to recoup costs for redaction if the redaction is performed by a full time employee of the county.

If the county attorney redacts the requested documents to protect confidential information, can the county charge the cost of the attorney's fees to the requestor?
Generally, no. The exception would be for county attorneys that are full-time employees of the county rather than outside counsel.

Requests for Records by Parties to a Civil Lawsuit

Requests by civil litigants (i.e., parties to a lawsuit) for records that are sought as part of or for use in any ongoing civil or administrative litigation against a county must be made in writing and copied to the county attorney at the same time as their submission to that county. The county must provide, at no cost, duplicate sets of all records produced in response to the request to the county attorney unless the county attorney elects not to receive the records.[116]

A former employee has made an open records request for employee evaluations related to his lawsuit. How should the county respond?
This request must be handled like any other open records request except that a copy of all documents provided to the former employee must also be given to the county attorney unless he or she has said that they do not want to receive them.

The county has sued a contractor for breach of contract. The contractor has now made an open records request for all documents related to the project. What should the county do?
The records must be provided to the contractor just like any other open records request. However, the documents must also be provided to the county attorney unless he or she has let the county know that they do not want copies.

Can the county charge the county attorney for the copies that it provides to an open records request related to a civil case in which the county is involved?
No. The law requires that a copy of the documents be provided to the county attorney free of charge unless the county attorney has indicated that he or she does not want to receive the copies.

Fees for Copies of Public Records

A county may charge a fee for the copying of records or data, not to exceed 10¢ per page for letter or legal size documents. In the case of other documents, the actual cost of producing the copy may be charged. For electronic records, the county may charge the actual cost of the media on which the records or data are produced.[117]

Can the county taxpayers be reimbursed for the cost of providing copies to an individual?
Yes.[118] To offset the cost to the taxpayers of providing records, counties may charge up to 10¢ per page for copies and the cost of search and retrieval (see administrative charges for search, retrieval and other costs of complying with a request below).

Can the county charge 25¢ per page for copies?
Not any longer. The maximum charge for copies of letter or legal sized copies was reduced to 10¢ effective April 17, 2012.

What steps must a county take to impose and collect charges for providing copies?
Counties are entitled to collect the copying fees authorized by law in order to offset the cost to the taxpayers to provide copies of records. However, the county must first give an estimate of the cost to search, retrieve, copy and any other applicable administrative fees prior to fulfilling the request.[119] While it is not required, it is advisable to put the estimate in writing to ensure that the requestor is aware of the cost. Additionally, it provides a record of the request and of the county's response. If the requestor fails to pay the amount owed, the county can collect the fee in the same manner as it collects taxes, fees or assessments owed to the county.[120]

How much can a county charge for copying public documents requested by a citizen?
A county can charge no more than 10¢ per page for copying letter or legal sized documents. A county may charge the actual cost of producing the copy for other sized documents and may charge the actual cost of media on which electronic records or data is produced. While not required by the open records law, a uniform rate should be established countywide for other documents and media so that different records custodians do not charge different rates for copying or producing documents that are not letter or legal sized. In some cases, higher fees may be permitted for copying or producing specific types of records if specified in law, such as GIS records.[121]

Can a board of commissioners obtain a list of the county electors qualified to vote without charge from the board of registrars?
Yes. The board of registrars must provide such a list to the board at no charge.[122]

Is it permissible for a superior court clerk to charge a higher fee for records or computer-generated data?
Yes. O.C.G.A. § 15-6-96 creates an exception authorizing the superior court clerk to distribute, sell or otherwise market records of the clerk's office and to set fees greater than the 10¢ per page or the cost of the electronic media established in the open records law pursuant to a contract entered into by the clerk and the requestor. If the clerk of superior court is also the clerk of another court, the same exception applies.

Administrative Charges for Search, Retrieval and Other Costs of Complying with a Request

A county may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records. Counties must use the most economical means reasonably calculated to identify and produce responsive, non-excluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise allowed by law, that specific fee must apply when those documents are being requested. In all other instances, the charge for the search, retrieval, or redaction of records must not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request, except that no charge may be made for the first 15 minutes.[123]

Who decides which employee has the necessary skill and training to respond to the request?
If one has been appointed, the open records custodian may be assigned responsibility for determining who is capable of responding to the request. Whether or not a records custodian has been appointed, it would be advisable for county management staff to develop standing procedures for determining which staff are to respond to open records requests.

If the lowest paid full time employee capable of responding to the request is paid $7.25 per hour and it takes two hours to retrieve and copy the requested documents, how much may the county charge to offset the cost to the taxpayers for the cost of providing access to the records?
Since there is no reimbursement for staff time for the first 15 minutes of work, the county may charge $12.69 plus 10¢ per page copied.

What is the basis for calculating staff time for responding to the open records request?
The law only permits reimbursement of the employee's prorated hourly salary or the hourly equivalent of the employee's weekly or monthly salary.

Must a county provide, retrieve and copy documents free of charge if the person requesting the documents files a pauper's affidavit?
No. Neither the open records law nor caselaw requires the county to provide records free of charge upon filing of a pauper's affidavit. [124]

Must a county provide an estimated cost prior to fulfilling the request?
Only if the estimated cost is greater than $25 must the county notify the requester within three business days and provide an estimate of the costs.

Must a county provide the records requested regardless of cost?
No. If the estimated cost is more than $25, the county may wait to search for and retrieve the records until the requester agrees to pay the estimated costs (unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs). If the estimated costs for production of the records exceed $500, the county may insist on prepayment of the costs before beginning search, retrieval, review, or production of the records.[125]

Can a county manager be assigned to retrieve minutes from an open meeting and thereby charge a higher hourly rate for doing so?
The salary of the county manager could be recovered only if the county manager is the lowest paid, qualified, full time employee who is capable of responding to the request. While there may be some sensitive or complex records that may be suitable for the county manager to retrieve, it is more likely to be appropriate for clerical staff to retrieve minutes and other basic records. Although the custodian of the records may be given the discretion to decide which employee has the necessary skills or training to carry out the task, he or she must use the most economical means available.[126]

If a county attorney actually makes copies of documents that could have been copied by clerical staff, can the rate of the county attorney be charged?
No. Even if a higher-paid employee actually fulfills the request, the county may only charge the hourly rate of the lowest paid person capable of performing the request.

Can a county attorney's hourly rate be charged if he or she reviews the requested documents prior to their release to ensure that no confidential information is contained in the documents?
Generally, no. The Georgia Court of Appeals has held that the open records law does not permit the county to recover the cost of legal review of requested documents.[127] However, if the county's attorneys are full time employees, their prorated hourly salaries can be charged if their services are necessary for redaction purposes.

Can the cost to redact exempt information from a requested record be recouped?
Yes. The county may charge the same hourly wage of the lowest paid, qualified full-time employee for the cost of redaction. As noted above, the prorated cost of a county attorney's time may be charged so long as he or she is a full time employee of the county.

If there are two employees who are capable of making the copies, one full time employee who earns $8.00 per hour and one part time employee who earns $6.50 per hour, what hourly rate is used to compute the county's reimbursement?
The county may be reimbursed at the rate of $8.00 an hour since the law specifies that the salary of the lowest paid full time employee be used to determine the reasonable charge for responding to the request.

Fees When Records Are Requested by Other Public Agencies

The procedures and fees provided for in the open records law do not apply to public records, including records that are exempt from disclosure pursuant to O.C.G.A. § 50-18-72, that are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The records custodian must provide copies of these records to the requesting agency unless the records are privileged or disclosure to such agencies is specifically restricted by law.[128]

Who is not required to pay fees for open records requests?
A grand jury, the state, the federal government, another county, a city, a school board, a law enforcement agency, a district attorney or a solicitor is not required to pay fees or follow any procedures in the open records law when requesting documents in conjunction with an ongoing administrative investigation, criminal investigation or tax investigation.

Would a city requesting copies of the county's contract for architectural services be required to pay copying fees?
Unless the request was made as part of an ongoing administrative, criminal or tax investigation, the city could be required to pay copying fees.

If a police officer requests a copy of the personnel files of his co-workers, is he required to pay the copying fee?
If the police officer is requesting the documents as part of an ongoing investigation, then he would not be required to pay the copying fees. If he requests the documents for any other reason, he could be required to pay the copying fees.

May a county impose an administrative charge for the time to search and retrieve the records for one of the agencies requesting documents for the purpose of an ongoing investigation?
No.

Fees for Trial Exhibits

The provisions of the open records law specifying fees for producing records provided in O.C.G.A. § 50-18-71(c) and (d) also applies to producing photographs, photocopies, facsimiles, or reproductions of trial exhibits.[129]

How much can the superior court clerk charge for copies of trial exhibits requested under the open records law?
The records custodian is limited to the same reimbursement as for any other type of open records request. If the original trial exhibit has not been approved by the court for inspection by the public, then the records custodian must make a copy, photograph or reproduction of the exhibit (except for exhibits in cases involving

certain offenses against minors). The records custodian may receive up to 10¢ per page for letter and legal sized copies and the actual cost of providing a photograph or other reproduction, as well as administrative costs such as staff time to search for and retrieve the requested records.[130]

Fees for Records on Electronic Media

With the exception of computerized geographic information system (GIS) records, where requested information is maintained by computer, the county may charge the public no more than the actual cost of the electronic media (e.g., CD, DVD, tape, jump drive, etc.) onto which the information is transferred and may charge for the administrative time involved.[131]

How much may a county charge for the electronic media used to copy information from the county's computer system in response to an open records request?
The county may charge the actual cost of the electronic media, plus the salary (for all but the first 15 minutes of responding to the request) of the lowest full-time paid person with the training and skill necessary to copy the information onto the electronic media.[132]

May the county charge $10 per DVD to download requested electronic information?
The county may only charge the actual cost of the DVD.

Can the county charge $30 to download requested electronic records on to a 64 GB flash drive?
As long as it is the actual cost of the flash drive, the county may charge that amount. However, it should be noted that the records custodian has the obligation to use the most economical means of providing access under the open records law.[133] So, if a less expensive 2GB flash drive would easily hold all of the requested records, then it would be difficult to justify using and charging for a 64 GB flash drive.

Fees for Geographic Information System (GIS) Records

Where geographic information is stored in electronic form, the county, regional commission, or other public agency housing the GIS data may license the use of the data, or charge a fee for access to the data. The fees collected may be set at a rate sufficient to pay for the cost of developing and maintaining the GIS, but may not be designed to establish a profit.

Must GIS records be provided to a requester that plans to use them for commercial purposes?
Yes. GIS records must be provided to a requester who plans to use them for commercial purposes. There is no exemption for GIS records despite the fact that there is oftentimes a significant commercial value to the records. However, the law allows the county to recover more than the actual cost of making the transfer of the information[134] because the cost of the transfer is fairly insignificant compared to the cost to the county to develop and maintain the GIS. As such, the county may charge a fee sufficient to pay the cost of developing and maintaining the GIS to the requestor.

May a county charge a license fee for access to its GIS?
Yes. The county may contract to sell access to information maintained in its GIS.[135] The license fee must be based upon the actual cost of building and maintaining the system.

What are the contract requirements for selling access to a county GIS database?
The contract must include provisions that protect the security and integrity of the GIS that limit the liability of the county for providing the service, that restrict the duplication and resale of the information provided, and that ensure that the taxpayers are fairly and reasonably compensated for the information or access provided.

Providing an Estimate of Copying and Administrative Fees Before Searching for or Copying Records

If the county intends to seek more than $25 for responding to a request, the records custodian must notify the requester of the estimate of the costs within a reasonable amount of time not to exceed three business days. The county may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. If responding to a request is estimated to cost more than $500, the records custodian may insist on prepayment of the costs before beginning search, retrieval, review, or production of the records.[136]

Can the records custodian require prepayment if responding to a request will cost $100?
Unless the requestor has not paid for a previous request,[137] the records custodian cannot require prepayment. The cost of the request must be estimated to cost more than $500 before prepayment is required. However, the records custodian can wait to begin complying with the request until the requestor has committed to paying the cost since it is estimated to cost more than $25.

Does a county have to provide an estimate in writing?
No. While the estimate does not have to be in writing, it would be wise to provide it in writing so that there is a record to later establish that the estimate was provided.

What if a county underestimates the charges?
Although not addressed in the law, the county should notify the requesting party that the actual costs will be greater than the estimate as soon as reasonably possible after it becomes known.

Collecting Unpaid Copying and Administrative Charges

Whenever anyone makes a request but fails to pay the cost incurred by the county to search, retrieve, redact or copy requested public records when such charges have been lawfully estimated and agreed to by the requestor, the county is authorized to collect the charges in any manner authorized by law for the collection of taxes, fees, or assessments regardless of whether the requester inspects or accepts or picks up copies of the records from the county.[138]

Whenever a requestor makes a request for records but has an outstanding balance for unpaid charges from a previous records request, the county may require prepayment from the requestor before complying with the new or any future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment is resolved.[139]

Can a county collect unpaid records request charges if it did not provide an estimate of the charges before retrieving and copying the requested records?
No.

Is a county entitled to collect copying fees from requestors who fail to pick up requested copies?
The county is entitled to collect the fees to cover the cost of searching, retrieving, redacting or copying of records requested, so long as an estimate of the charges was provided and agreed to by the requestor prior to the county fulfilling the request and the county has actually incurred the costs of responding to the request.

How does a county collect the charges for responding to an open records request when a requester fails to pay?
So long as the county notified the requestor of the estimated charges prior to fulfilling the request as required by O.C.G.A. § 50-18-71(c)(3), then the county may collect the charges in the same way it collects taxes, fees or assessments. For example, this means that the county can place a lien on the requestor's property or garnish the requestor's wages after obtaining a judgment against the requestor.[140]

Can a county recreation commission, or other local agency, collect unpaid open records request charges in the same manner as the county?
Yes. County boards and authorities, such as the development authority, housing authority, hospital authority, board of tax assessors, board of equalization, zoning department, building inspection department, personnel department, tax commissioner, clerk of superior court, etc., may collect the charges in the same manner that the county collects taxes, fees or assessments. Similarly, consolidated governments and joint county-city agencies can use any method of collection available to either counties or cities to collect unpaid open records request fees.

Records That Do Not Exist

No public officer or county is required to prepare reports, summaries, or compilations not in existence at the time of the request.[141]

A citizen has requested that a county compile a report from data in the county files or database. Must the county comply?
No. While the citizen has a right to inspect or obtain copies of the data, the law clearly provides that the county does not have to prepare reports, summaries or compilations that are not already in existence. The county must, however, provide reasonable access to the records.

A reporter requests a summary of a highly technical 200 page environmental report on the county's landfill be provided by the county, but a summary does not exist. Must the county prepare a summary?
No. The county is not required to prepare a summary that does not exist.

A citizen requests a list of all county employees who live within the county with their salaries and dates of hire. While the county has records on all of its employees, salaries, addresses, and dates of hire, this information is not in any one document or report. How should the county respond?
The county is not required to go through several different documents to compile a report. The county should notify the citizen in writing that such a report does not currently exist. The notice should also contain: (1) a description of the documents that contain the desired information, but that the desired information is contained in separate documents;[142] (2) an estimate of the number of documents that the county maintains that contain the requested information; (3) an estimate of the copying cost;[143] and (4) an estimate of the salary cost that would be incurred to retrieve the documents.[144]

A reporter has sent an e-mail posing several questions about a particular project to the county manager. Does the county manager have to answer the questions under the open records law?
If there are documents responsive to the request of the reporter, then the county manager should supply those documents (assuming that they are subject to release under the law) but the county manager is not obligated by the open records law to answer questions. However, as a matter of county policy or in the furtherance of developing a better relationship with the media, it is up to the county whether or not the questions are answered.

A citizen asks for copies of all existing county contracts related to the county water system as well as any future contracts that may be executed by the county. How does the county respond?
The citizen is entitled to receive the existing water system contracts. As to future contracts, the county does not have to set up a system to remember to provide documents that may or may not come into existence sometime in the future. The citizen may, however, request future documents at such time as they are eventually created.

🕮 RECORDS EXEMPTED FROM THE OPEN RECORDS LAW

While most records in the possession of a county must be disclosed to members of the public upon request, there are a significant number of records that are exempt from disclosure. However, not all exempt records are treated the same. Essentially, exempt records can be classified into three categories: (1) where disclosure is prohibited by law (i.e., when the county is not allowed to release the records); (2) where disclosure is at the discretion of the county (i.e., where the county can decide whether to release the record or keep it confidential); and (3) where public access may be withheld temporarily (i.e., where the county can keep the record confidential for a limited amount of time before being required to release it).

🕮 EXEMPT RECORDS: WHERE DISCLOSURE IS PROHIBITED

The records discussed below are those that the county is not allowed to release or could face penalty for releasing.

Records Prohibited by Court Order

Public disclosure is not required for records that are specifically exempted from being open to inspection by court order.[145]

If there is a court order stating that a document may not be released, but the document does not otherwise fall into an exemption under the open records law, may the county release it?
No. The county must obey the court order. Such documents are not subject to inspection.

Records Where Confidentiality is Required by the Federal Government

Public disclosure is not required for records that are specifically required by the federal government to be kept confidential.[146]

If requested, must a county release individual death certificate records, information related to the cause of the death, conditions leading to the person's death and information regarding surgical procedures conducted on the deceased?
If the county is not a "covered entity" under the Health Insurance Portability and Accountability Act (HIPAA), then the Attorney General has opined that death certificates are public records subject to the open records law and such disclosure is not prohibited by the HIPPA. However, the social security number of the deceased should be redacted unless the requester is a bona fide member of the news media who submits the appropriate affidavit under the open records law.[147]

Medical Records and Invasions of Privacy

Public disclosure is not required for medical records, veterinary records and similar files that would be considered an invasion of personal privacy. Furthermore, medical information contained in public records must be redacted before allowing public access.[148]

Must employee medical records be disclosed?
No. In fact, medical information must be redacted from any open records request.[149]

May the name or records of an individual who has sought treatment through a drug treatment and education program maintained by the county board of health be released?
No. O.C.G.A. § 26-5-17 provides that this information is confidential and not subject to disclosure unless the drug dependent person whose records are sought has authorized the release in writing or unless required by a court order.

Can a county health department's medical records ever be released?
Yes. Under O.C.G.A. § 9-11-34(c)(2), a party to a lawsuit may serve a "request for production of documents" on the health department to obtain medical records on a patient. Within 20 days of the request, the health department, any of the parties to the lawsuit, or the patient whose records are being sought, may file an objection with the court in which the lawsuit is pending. If no objection is filed within 20 days, then the health department must comply with the request except that records concerning mental illness covered by O.C.G.A. § 37-3-166, records concerning mental retardation covered by O.C.G.A. § 37-4-125, and records concerning alcohol and drug treatment covered by O.C.G.A. § 37-7-166 may not be released.

What is considered an "invasion of privacy"?
In general, invasion of privacy is the public disclosure of private or secret facts, which if disclosed are offensive and objectionable. There must be a reasonable expectation of privacy on behalf of the individual whose personal information is being sought and the matter must be one which the public has no legitimate concern about in fact and in law. The courts have held that there is not an expectation of privacy for information that reflects a public official's or employee's performance of public duties.

Would the release of records from a sexual harassment investigation be an invasion of privacy?
While such a request should always be forwarded to the county attorney prior to the release of the records, case law has held that a public officer's privacy interest in having the investigation of a sexual harassment claim against him publicized is outweighed by the public's right to access the information under the open records law (see *Fincher v. State*, Appendix D). In other words, where sexual misconduct arises out of a public officer's performance of his job duties, there is no legitimate expectation of privacy and such records most likely must be released.

Would the release of a personnel file be an invasion of privacy?
Generally, the release of a personnel file for a county official or employee would not be an invasion of privacy. While portions of a personnel file containing that employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card or debit card information, bank account information, account number and password, financial data or information other than compensation by the county, unlisted telephone number and the identity of the employee's immediate family members or dependents must be redacted or withheld,[150] most of the information contained in the files is subject to disclosure. However, O.C.G.A. § 35-8-15 does exempt certain employment records maintained by the sheriff's office or police department.

Is it an invasion of an employee's privacy to provide salary information to a citizen making such a request?
No. Compensation paid to county employees and officials must be released.

Must the names, addresses, dates of birth and voting districts of electors be released upon receiving an open records request?
Yes. Information on individuals who possess all of the qualifications for voting and who have registered to vote, with the exception of bank statements, month and day of birth, social security numbers, e-mail addresses, driver's license numbers of the electors, and the locations at which the electors applied to register to vote, may be reviewed by the public in accordance with O.C.G.A. § 21-2-225. However, the original application for voter registration is not open for public inspection without a court order.

Personal Information in Public Records

Many public records contain personal information about citizens who own property in, reside in, work for, or do business in the county. The open records law requires counties to protect much of that information from disclosure to the public. Generally, an individual's social security number, mother's birth name, credit card and debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet or telephone accounts held by private customers must be redacted prior to disclosure of any record requested pursuant to the open records law. However, social security numbers and the day and month of birth of individuals other than public employees, may be released to a person or entity that makes a written request signed under oath that states that the person or entity is requesting the information as a representative of a news media organization for use in connection with news gathering and reporting.

Public disclosure of personal information in public records may be allowed in the limited circumstances as follows:

- Personal information contained in the records or papers of any court or derived from any court, including all secured transactions records maintained pursuant to the Unified Commercial Code – Secured Transactions[151] may be released;

- Personal information may be given to a court, prosecutor, or publicly employed law enforcement officer, or their authorized agent, seeking records in an official capacity;

- Personal information may be given to a federal, state, or local government employee who is obtaining the information for administrative purposes, in which case, subject to all applicable federal law, further access to the information will continue to be subject to the open records law;

- Personal information may be released if authorized by a court order;

- Personal information may be given to the person about whom the information is being maintained. In such case, a person or an authorized agent may receive their own personal information. The county must require proper identification of that person or agent requesting the information, or proof of authorization, as determined by the county;

- The day and month of birth and mother's birth name of a deceased individual may be released;

- Credit or payment information in connection with a request by a "consumer reporting agency"[152] as defined under the federal Fair Credit Reporting Act[153] may be released;

- Personal information may be released in connection with the county's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the county or individuals or entities whom the county assists in the collection of debts owed to the individual or entity;

- Personal information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes may be released; or

- The date of birth within criminal records may be released.

The above list of records and information may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains these records or information and knowingly and willfully discloses, distributes, or sells them to an unauthorized recipient or for an unauthorized purpose is guilty of a misdemeanor of a high and aggravated nature and upon conviction will be sentenced to a fine up to $5,000 and/or 12 months in jail.[154] Any person injured by these actions has a cause of action for invasion of privacy.

In the event that the records custodian has a good faith reason to believe that a pending request for records has been made fraudulently, under false pretenses, or by means of false swearing, the records custodian must apply to the superior court of the county where the records are maintained for a protective order limiting or prohibiting access to the records.

These requirements supplement and do not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in O.C.G.A. § 50-18-72(a)(20)(A) and constitute only a regulation of the methods of access where not otherwise provided for, restricted, or prohibited.[155]

If a county accepts payments by credit card, must it release credit card account information under the open records law?
No. In fact, except when provided to the media and others under the terms of O.C.G.A. § 50-18-72(a)(20) described above, the county is prohibited from releasing such information.

May a county release social security numbers, bank account information, credit card information, debit account information, medical information, insurance information, financial data, mother's birth name, or day and month of birth contained in county records?
No. Under most circumstances, the county is prohibited from releasing personal information that could be used to steal an identity or for other fraudulent purposes. However, if a reporter requests social security numbers and day and month of an individual's birth and submits a written request signed under oath, the county must release that information on anyone except public employees. Additionally, these records may be released if they are contained in court papers. Generally, government officials and employees may obtain access to such information if they are seeking the information in an official capacity or for an official purpose. Similarly, consumer reporting agencies may obtain credit and payment information, and date of birth and mother's birth name may be released for deceased individuals. Despite limits on others accessing personal information, individuals may obtain personal information about themselves when maintained by the county.

What if an individual performing genealogical research requests a copy of records indicating a mother's birth name and the day and month of birth of their great-grandmother?
The county may release the day and month of birth and mother's birth name if the great-grandmother is deceased.

Must the superior court clerk redact all protected personal information from Uniform Commercial Code filings and other public court documents?
No. Information maintained by courts, including information on secured transactions, may still be accessed.

May protected personal information be released to consumer reporting agencies, such as Equifax?
Credit and payment information may be released to consumer reporting agencies.

May individuals obtain personal information about themselves in county records, even though it is otherwise confidential?
Yes.

May collection agencies obtain protected personal information?
If the collection agency is assisting the county in collecting unpaid debts owed to the county, the county may release information that will assist in collection.[156]

Must a county release social security numbers and day and month of birth information to news reporters?
Yes. If the reporter submits a written request signed under oath stating that the reporter is a representative of a news media organization and is seeking the information in connection with news gathering and reporting, the county may release social security numbers and dates of birth of anyone except for public employees.

Must a county board of commissioners or school board release social security numbers and day and month of birth information of school teachers or other public employees to news reporters?
No. In fact, the county school board is prohibited from releasing such information, even if the reporter makes a written request under oath.

What if the records custodian believes that a fraudulent request for protected personal information has been made?
The records custodian must apply to the superior court for a protective order limiting or prohibiting access to the records within three days of the request.[157]

What if a records requestor improperly uses protected personal information?
If the records requestor knowingly and willfully discloses, distributes or sells personal information to an unauthorized person or for an unauthorized purpose, he or she may be liable for an invasion of privacy, as well as be found guilty of a misdemeanor of a high and aggravated nature, which is punishable by 12 months imprisonment and/or a $5,000 fine.

May other governmental officials have access to protected personal information?
Yes. As long as they are seeking the information as part of their governmental duties, otherwise protected information may be released to governmental officials.

Personal Information about Public Employees and Officials

Public disclosure is not permitted for records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by the county, unlisted telephone number (if so designated in a

public record), and the identity of the public employee's immediate family members or dependents. This exemption does not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. The term 'public employee' means any officer, employee, or former employee of: the State of Georgia or its agencies, departments, or commissions; any county or municipality or its agencies, departments, or commissions; other political subdivisions of this state; teachers in public and charter schools and nonpublic schools; or early care and education programs administered through the Department of Early Care and Learning.[158]

Are personnel files open records?
Although personnel files are open records, some of the information contained therein may not be subject to disclosure. For example, social security numbers, insurance information, medical information, information that would constitute an invasion of privacy,[159] information of an ongoing investigation or within 10 days of a completed investigation related to the suspension of, termination of, or complaint against an employee or officer[160] and confidential employee evaluations[161] do not have to be released or may have to be redacted under the open records law.

Can a county refuse to release the social security numbers of its employees?
Yes. In fact, social security numbers, mother's birth name, credit card information, bank account information, financial data, medical and insurance information, etc. must be redacted, (i.e., marked through or whited out) from most open records requests.[162]

What should a county do when an open records request is made to review an employee's personnel file?
A copy of any portion of the file that contains information exempted from release under the open records law should be made and the confidential portions should be redacted before release.

An open records request is made to review a terminated employee's personnel file that was purged pursuant to a settlement agreement. Is the fact that the file has been purged subject to release?
Litigation over termination of an employee may result in a settlement agreement that requires purging certain information about the employee. In such a case, the personnel file must contain a notation that the file has been purged as a condition of a settlement agreement. Furthermore, if another governmental agency contacts the county about the former employee's work history in order to make a hiring decision, the county must disclose the fact that the personnel file was purged pursuant to a settlement agreement.[163]

Electronic Signatures

Public disclosure is not required for records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. "Electronic signature" is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.[164]

Records of Children Participating in Public Recreation Programs

Records of athletic or recreational programs offered by the state, a county, or other local government that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, must be redacted to delete the information that would identify the child or children.[165]

May the county parks and recreation department provide a list of participants in the youth football program to a vendor of sporting goods?
Any portion of a record that would identify children 12 years old or under must be redacted.

Portions of Records Containing Trade Secrets

Public disclosure is not required for records containing trade secrets obtained from a person or business that is required by law, regulation, bid, or request for proposal to be submitted to a county. If the person or business submitting the records wants to protect trade secrets contained in those records from disclosure to competitors or other requestors, the person must attach an affidavit to the records stating that specific information in the records is a trade secret.[166]

What is a "trade secret"?
According to the Georgia Trade Secrets Act of 1990, a "trade secret" is information, such as data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial plans, financial data, product plans, customer lists, supplier lists, etc., that derive economic value from not being generally known by, or available to, the public.[167]

May a "trade secret" be disclosed by a county?
No. A trade secret must be kept confidential.

Many vendors with the county mark their contracts as "confidential" and "proprietary." Are these contracts "trade secrets"?
A company cannot merely stamp an otherwise open record with "confidential" or "proprietary" to fall under the trade secret exemption to the open records law. The company must include an affidavit that states that specific portions of the contract contain trade secrets.

Why would a county require a company to provide "trade secrets"?
In order to respond to an invitation to bid or request for proposal, a bidder may have to submit certain information that may be proprietary to the company responding. The company may deem the information to be a trade secret and want to protect that information from disclosure to competitors that might make and open records request for the information.

What should the county do if an open records request is made for a document for which a trade secrets affidavit is provided?
While the open records law allows the county to make some determination about the existence of a trade secret, the county typically will not be in a position to make that determination. After consulting with the county attorney, and keeping in mind that the actual dispute is between the requestor and the party claiming the trade secret, the better practice for counties is to deny the request for the records based on the trade secret affidavit and, to the extent possible, let the actual parties with the disagreement resolve the question in court.

How should the county handle requests for documents that do not include an affidavit affirming that trade secrets were included?
If there is no affidavit, the trade secrets exemption does not apply. The documents must be released.

What happens if a county, believing that it is required to release the information pursuant to the open records law, unintentionally releases a "trade secret?"
According to the Georgia Trade Secrets Act of 1990,[168] the county could be liable for damages and attorney's fees for certain types of releases.[169] However, if the county provides access to the information under a good faith belief that the records were subject to release under the open records law, then it will not be liable for damages.[170]

Portions of Records Containing Proprietary Information

Public disclosure is not required for data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, 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.[171]

Must a county keep "proprietary" information confidential if it is requested under the open records law?
A county may only withhold "proprietary" information if: (1) the information has not already been publicly released, published, copyrighted or patented; and (2) the information was collected by the county while performing a study or research on commercial, scientific, technical or scholarly issues.

If a contract entered into between a county and a private company designates all documents generated by the company as "confidential" or "proprietary," can a county refuse to disclose such documents if a request is made for those documents under the open records law?
Merely because a company designates its documents as "proprietary" or "confidential" does not mean that the county may withhold the documents if requested by a member of the public. Most companies that regularly deal with government understand the open records requirements placed on counties and should accept a contract term that company documents in the possession of the county will be treated as confidential only to the extent permitted by the open records law.

Records Containing Confidential Tax Matters

Public disclosure is not required for records containing confidential tax information or that involve certain tax matters as determined by state and federal law.[172]

May a county release information provided by a business to determine the amount of occupation taxes due?
No. O.C.G.A. § 48-13-15 prohibits the county occupation tax department from releasing such information except: (1) to other local governmental agencies for occupation tax purposes; or (2) for the purpose of collection or prosecution for failure to pay occupation tax.

Are depreciation schedules submitted to a board of tax assessors in an appeal of an assessment on property subject to disclosure under the open records law?
No. In accordance with O.C.G.A. § 48-5-314(a), documents such as taxpayers' accounting records, balance sheets, profit and loss statements, income and expense statements are exempt from the open records law. Such information may only be accessed by certain authorized personnel. While such information may be disclosed if necessary to collect taxes through an administrative or court proceeding, it is a misdemeanor to knowingly furnish such information to a person not authorized by law to receive it.

May a tax commissioner furnish information contained in tax returns, reports and schedules to tax officials in other states?
Yes. Provided that the information contained in the documents will be treated as confidential in the other state and the information is being used for tax purposes, the tax commissioner may enter into agreements to furnish tax returns, reports and schedules.[173]

Is the real property digest or a return from an ad valorem taxpayer confidential?
No.

Are field cards and other records containing information gathered by the personnel of the board of tax assessors confidential?
No. O.C.G.A. § 48-5-314(a)(2) specifically allows for the disclosure of this type of information.

Computer Programs and Software

Public disclosure is not required for records consisting of any computer program or computer software used or maintained in the course of operation of a county; provided, however, that data generated, kept, or received by a county is subject to inspection and copying.[174]

Must a county comply with a citizen request to obtain a copy of the county's Microsoft Office software?
No. In fact, complying with such a request would place the county in violation of its licensing agreement with the software manufacturer.

Must a county comply with a citizen request to obtain a copy of a database created by the county?
Yes. A copy of a database must be provided unless the information contained within the database is exempted by law.

Original Trial Exhibits

Unless otherwise permitted by law, the original exhibit provided to the court as evidence in a criminal or civil trial is not open to public inspection without approval of the judge assigned to the case. If the court does not approve release of the original exhibit, then the records custodian must, upon request, provide a photograph, a photocopy, a facsimile, or other reproduction of the exhibit. Fees for the production of a record provided in O.C.G.A. § 50-18-71(c) and (d), also apply to the production of trial exhibits.

Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of O.C.G.A. § 16-12-100 is not open to public inspection except by court order. If the judge approves inspection of physical evidence, the judge must designate, in writing, the facility owned or operated by an agency of the state or local government where the physical evidence may be inspected. If the judge permits inspection, the property or material cannot be photographed, copied, or reproduced by any means. Any person who violates these provisions is guilty of a felony which, upon conviction is punishable by imprisonment for not less than one nor more than 20 years, a fine of not more than $100,000, or both.[175]

Can a citizen review a business ledger used as an exhibit in a "small claims" court case under the open records law?
The actual trial exhibit in such a case is not subject to public inspection without the approval of the magistrate assigned to the case. The same would apply to exhibits in cases in superior, state and juvenile courts. However, a citizen may request to review a copy of the business ledger or a photograph of the business ledger.

If the court does not approve a request to review a trial exhibit, such as a gun found at the scene of crime, how does the court clerk or administrator respond to an open records request by a reporter?
The clerk may photograph, photocopy or otherwise reproduce the trial exhibit and submit the reproduction to the person making the open records request.

Does the county have to provide a copy or reproduction of physical evidence in a trial where sexual exploitation of a child is alleged?
Physical evidence where sexual exploitation of a child is alleged is not allowed to be inspected under the open records law without a court order. Even if the judge allows inspection of the physical evidence, it cannot be photographed, copied or otherwise reproduced.

Vital Records

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of O.C.G.A. § 31-10-1 *et seq*., which contains information that is exempt from disclosure under O.C.G.A.§ 31-10-25, and is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health is open to inspection by the general public, even though the other papers or documents in the file may be open to inspection.[176]

What are "vital records"?
"Vital records" include birth certificates, death certificates, marriage certificates, divorce certificates and other records related to these documents.[177]

Are vital records open to the public?
No. It is unlawful for any person to permit inspection of, or to disclose information contained in vital records or to copy or issue a copy of all or part of any such record except as authorized by O.C.G.A. § 31-10-1 *et seq*., as well as the regulations of the Department of Public Health, or by order of a court as in inspection warrants regulated by O.C.G.A. § 31-10-25.

Who may obtain copies of a birth certificate?
According to O.C.G.A. § 31-10-26, only the person whose record of birth is registered, the parent, guardian, or temporary guardian of the person whose record of birth is registered, the living legal spouse or next of kin or the legal representative or the person who in good faith has applied and produced a record of such application to become the legal representative of the person whose record of birth is registered, the court of competent jurisdiction upon its order or subpoena, or any governmental agency, state or federal, if the certificate is needed for official purposes may obtain copies of a birth certificate.

Cable and Video Service Provider Financial Information

Public disclosure is not required for statements showing the aggregate amount of the state cable or video service franchise holder's gross revenues, specifically identifying subscriber and advertising and home shopping services revenues insofar as the franchise holder's existing billing systems include the capability, attributable to the city or unincorporated areas of the county; the amount of the franchise fee payment due to the city or county; and any records or information furnished or disclosed by a cable service provider or video service provider to an affected city or county.[178]

Is the county required to release information on the franchise fee amount paid to the county by the cable or video provider?
No. The law specifically exempts this information.

🕮 EXEMPT RECORDS: WHERE DISCLOSURE IS DISCRETIONARY

The records discussed below are those that may, but are not required, to be kept confidential.

Records Where Public Access Is Not Required by Law

Public disclosure is not required for records that are specifically exempted from being open to inspection by the general public by law.[179]

If a record is not listed in O.C.G.A. § 50-18-72 as a record exempt from the open records law, must it be released?
If a record is not listed in O.C.G.A. § 50-18-72 or some other statute as being exempt from disclosure, then it is an open record that must be released. (See Appendix H)

Records Identifying Confidential Sources or Investigative Materials

Except as otherwise provided by law, public disclosure is not required for records compiled for law enforcement or prosecution purposes to the extent that production of these records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material that would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation.[180]

Can the name of a citizen who informs the county code enforcement officer about a zoning violation committed by a neighbor be kept confidential?
If the complaint results in an investigation or prosecution of the ordinance violation against the neighbor, the complaining citizen's name may only be withheld if his or her life or physical safety would be in danger due to the release of the name.

Accident Reports

Public disclosure is not required for individual Georgia Uniform Motor Vehicle Accident Reports, unless a written statement of need is submitted by the requesting party to the records custodian providing the specific need for the report as permitted under the open records law. However, any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report is entitled, either personally or through a lawyer or other representative, to receive a copy of the report. The Georgia Uniform Motor Vehicle Accident Reports is not available in bulk for inspection or copying by any person unless they have a written statement showing the need for each report pursuant to the requirements of the open records law.

The term 'need' means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

- Has a personal, professional, or business connection with a party to the accident;
- Owns or leases an interest in property allegedly or actually damaged in the accident;
- Was allegedly or actually injured by the accident;
- Was a witness to the accident;

- Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

- Is a prosecutor or a publicly employed law enforcement officer;

- Is alleged to be liable to another party as a result of the accident;

- Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

- Is gathering information as a representative of a news media organization;

- Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this provision must apply only to accident reports on accidents that occurred more than 30 days prior to the request and which must have the name, street address, telephone number, and driver's license number redacted; or

- Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties.[181]

Must accident reports be released under the open records law?
Generally, accident reports need not be released except to certain individuals specified in the open records law.

Who may obtain copies of accident reports?
The parties and witnesses involved or injured in the accident (and their attorneys or other representatives) and the insurance companies may obtain copies of accident reports, as well as any individual: who has a personal, professional or business connection with a party to the accident; who is identified in the accident report, who owns or leases one of the vehicles (or other property) damaged in the accident; who may be liable as a result of the accident; who is conducting "public interest" research; who is a representative of a news media organization; or who is an attorney needing the accident report as part of a criminal case or an investigation involving the safety of a road, railroad crossing or intersection. Additionally, a district attorney, solicitor or law enforcement officer may obtain a copy of an accident report.

Is there a special procedure for obtaining accident reports?
Unless otherwise exempted (see above), the requesting party must file a written "statement of need" that indicates that the party is authorized to access the accident report.

Who must file a "statement of need" in order to gain access to an accident report?
Anyone with a personal, professional or business connection with a party to the accident, anyone who owns or leases a vehicle or other property damaged in the accident, anyone injured by the accident but not named or identified in the accident report, a witness to the accident who is not named or identified in the accident report, the insurance company, anyone alleged to be liable as a result of the accident, any attorney requesting the accident report as part of a criminal case or an investigation into the safety of a roadway, railroad crossing or intersection, a representative of a news media organization, or anyone conducting research in the "public interest" must file a statement of need before gaining access to an accident report.

Who can have access to an accident report without filing a "statement of need"?
Anyone named or identified in the accident report is entitled to receive a copy of the accident report without filing a statement of need, as well as their attorney or other representative. Additionally, a grand jury, taxing authority (i.e., the federal government, the state, a county, a city, a school board, etc.), a law enforcement agency or a prosecuting attorney may obtain access to accident reports without filing a statement of need if they are acquiring the report in conjunction with an ongoing administrative, criminal or tax investigation.[182]

Must the names, addresses, telephone numbers and drivers' licenses be redacted when responding to an open records request for accident reports?
Only when the "need" for the accident report is for "public interest" research must this information be redacted from the accident report. However, if the accident report contains an individual's day and month of birth, it must be redacted.[183]

May accident reports ever be obtained in bulk?
Accident reports may only be obtained in bulk if the person requesting the accident reports is authorized to have access to each and every accident report requested and files a written statement of need for each and every accident report requested.

Can a newspaper reporter obtain copies of the reports for all accidents occurring during a 30 day period?
Yes. As long as the reporter files a written statement of need for each report stating that the request is on behalf of a news media, the reports may be made available in bulk.

Records Disclosing the Location of Certain Historic Properties

Public disclosure is not required for records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties, as defined by law,[184] if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located.[185]

If the local archeological society requests information from the county parks department that identifies sites in a county park where Indian pottery shards or arrowheads may be found, what should the parks department do?
Before releasing the location of such a site, the parks and recreation department should contact the Historic Preservation Division of the Department of Natural Resources to determine whether the site is on the list of historic properties the location of which must be kept confidential in order to remain a historical resource.

Records Disclosing the Location of Rare Plants and Animals

Public disclosure is not required for records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located. However, the owner or owners of private property where rare species of plants or animals occur or sensitive natural habitats are located are entitled to this information pursuant to the open records law.[186]

If a county's parks department receives a request for documents that identify the location of Pink Ladyslipper plants growing in a county park, must the department release the documents?
No. Pink Ladyslipper is on the list of plants, maintained by the Georgia Natural Heritage Program, the location of which must be kept confidential to prevent commercial exploitation of the plant. Whenever the county receives an open records request for records that would identify the location of certain plants or animals, the Department of Natural Resources' Georgia Natural Heritage Program should be consulted to ensure that the plants or animals are not on the list of species in danger of being destroyed.

Burglar Alarm, Fire Alarm and Security System Information

Public disclosure is not required for records that reveal the names, home addresses, telephone numbers, security codes, e-mail address, or any other data or information developed, collected or received by counties in connection with the installation, servicing, maintaining, operating, selling or leasing of burglar alarm systems, fire alarm systems or other electronic security systems.[187]

If the county provides security systems for a fee to its citizens, is it required to release the personal information of those who subscribe to the service?
No. The county does not have to release the names, home addresses, telephone numbers, security codes, or e-mail addresses of customers of the county's security system.

Neighborhood Watch and Public Safety Notification Programs

Public disclosure is not required for records that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses or any other data or information developed, collected or received by the county in connection with a neighborhood watch or public safety notification program.[188]

If the county receives a request to release the e-mail addresses of the recipients of its' public safety notification program newsletter for the purpose of disseminating campaign information, does the county have to release this information?
No. The county does not have to release the e-mail addresses of the recipients of the public safety notification program to anyone for any purpose.

Portions of Records Containing Information about Rideshare Participants

Public disclosure is not required for records acquired by a county for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting.[189]

Is the county required to provide information about rideshare participants?
No. The records of anyone participating in or anyone expressing an interest in participating in a carpool or rideshare program may be kept confidential.

Records the Disclosure of Which Could Compromise Public Security

Public disclosure is not required for records that, if disclosed, could compromise security of the public against sabotage or criminal or terrorist acts. This exemption applies to those records that must be kept confidential in order to protect life, safety, or public property.[190] Exempt records include:

- Security plans and vulnerability assessments for public utilities, technology infrastructure, building, facility, or function (in effect at the time of the request for disclosure) or pertaining to a plan or assessment in effect at such time;
- Security plans and vulnerability assessments for deployment of surveillance strategies, actions required by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protections, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;
- Plans for protection against terrorist or other attacks that depend for its effectiveness in whole or in part upon a lack of general public knowledge of its details;
- Documents relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;
- Plans, blueprints, or other material that, if made public, could compromise security against sabotage, criminal, or terroristic acts; and
- Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

In the event of litigation challenging nondisclosure pursuant to this requirement, the court may review the documents in question in camera. The judge may allow disclosure to be conditioned, in writing, upon measures as the court may find to be necessary to protect against endangerment of life, safety, or public property. [191]

What types of records may be kept confidential in order to protect the public from potential sabotage or terroristic acts?

Generally, the public may be denied access to the following records: (1) Security plans and vulnerability assessments for public buildings, utilities, technology infrastructure, and other public functions or activities; (2) Plans for protection against terrorist or other attacks; (3) Documents relating to the existence or location of security devices; (4) Plans and blueprints which, if made public, could compromise security; (5) Facilities, anti-terrorism plans, plans or blueprints that would reveal security devices or otherwise compromise security. It would also include contingency plans for meetings, motorcades, dignitary protection, after action reports and similar documents.[192]

Are security plans ever required to be released?
A requestor may file a lawsuit challenging the denial of access to a security plan. The judge could review the security plan and decide whether it can be released. If the judge determines that the record can be released, he or she may place conditions on the release of the records to protect against the endangerment of life, safety or public property. The conditions must be in writing.

Written Records and Recordings of 9-1-1 Calls

Public disclosure is not required for portions of 9-1-1 records and tapes that would reveal the name, address or telephone number of callers to 9-1-1 centers when revealing that information could put the caller at risk or disclose the identity of a confidential source unless the request is made by a defendant in a criminal case.[193]

If a caller to a 9-1-1 center reports wrongdoing, can the perpetrator or some other person file an open records request to find out who reported him or her?
The name, address and telephone number of a citizen placing a call to an emergency 9-1-1 center may be redacted from any records, written or recorded, when an open records request is filed. This is aimed at preventing retribution against a person who sees wrongdoing and properly reports it to law enforcement authorities through the 9-1-1 call center. Without this exemption, a perpetrator could obtain the identity of the caller by filing an open records request.

If a newspaper is researching an article on slow response times to requests for assistance when a 9-1-1 call is placed, can recordings and other records that might provide a basis for criticism be withheld?
No. Except for the identifying information of callers to 9-1-1 who might be at risk, records of a 9-1-1 call center are subject to disclosure like the records of any other public agency.

Applications for Licenses to Possess Firearms

Public disclosure is not required for any permanent records maintained by a probate court judge pursuant to O.C.G.A. § 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. Law enforcement agencies, however, are not precluded from obtaining records relating to licensing and possession of firearms as provided by law.[194]

Must a probate judge allow a newspaper to review an application for a license to carry a pistol?
No. Law enforcement officers, however, cannot be denied access to those records.

Records That Are Subject to the Attorney-Client Privilege

Public disclosure is not required for records containing communications subject to the attorney-client privilege recognized by state law, including legal conclusions. However, this exemption does not apply to factual findings of an attorney conducting an investigation on behalf of a county so long as the investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee.

Investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies are exempt from disclosure if these investigations are otherwise subject to the attorney-client privilege.

Attorney-client communications, however, may be obtained in a legal proceeding[195] to prove justification (or lack thereof) in refusing disclosure of documents for this exemption. However, the judge of the court where the proceeding is pending must first determine by an in camera examination that disclosure would be relevant on that issue. In addition, when a county withholds information subject to this exemption, any party authorized to bring a proceeding under O.C.G.A. § 50-18-73 may request the judge of the court where the proceeding is pending to determine by an in camera examination if the information was properly withheld.[196]

How does a county clerk know which documents are confidential pursuant to the "attorney-client privilege"?
The county attorney should be consulted if the clerk believes that a particular document may be subject to the "attorney-client privilege."

Can a county attorney refuse to disclose a bill submitted to the county for legal services?
No. Billing records do not fall within the attorney-client privilege exemption.

Is the county attorney's e-mail to the board of commissioners informing them of the time and location of an upcoming meeting an open record?
While this may be a communication between attorney and client, if it does not involve pending or potential litigation or claims, then an e-mail with factual information would be an open record.

Is the county attorney's e-mail outlining the county's potential liability in a particular situation an open record?
No. This e-mail would be exempt from disclosure under the attorney client privilege as it would pertain to potential litigation or claims.

Does correspondence between an attorney and client regarding a proposed settlement become subject to production under the open records law once the matter is settled?
No. The attorney-client relationship survives the end of the representation and even the relationship, unless explicitly waived by the client.[197]

Records That Are Attorney Work Product

Public disclosure is not required for records that are considered confidential attorney work product. Disclosure is not required for legal conclusions of the attorney, but it is required for factual findings of an attorney conducting an investigation on behalf of a county if the investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee.

Investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies must be exempt from disclosure if these investigations are otherwise subject to confidentiality as attorney work product.

In addition, when a county withholds information based on this exemption, any party authorized to bring a proceeding under O.C.G.A. § 50-18-73 may request the judge of the court where the proceeding is pending to determine by an in camera examination if the information was properly withheld.[198]

Does the county attorney's research and evaluation of a harassment claim against the county have to be released?
No. Most likely, such records would be protected under the attorney work product exception to the open records law.

Does a claims adjuster in a county's risk management department have to release reports and evaluations of accidents involving county vehicles?
No, claims adjusters are not required to release such information on claims involving motor vehicle accidents.[199]

Does a claims adjuster in a county's risk management department have to release reports and evaluations of claims involving an injury to a citizen who slipped and fell in the courthouse?
The county attorney should be consulted to determine whether the report or evaluation falls within the attorney client or attorney work product exemption. The open records exemption contained in O.C.G.A. § 36-92-4(c) only applies to claims involving motor vehicles owned by the county.

Records Related to County Liability and Self-Insurance

Public disclosure is not required for records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to a county.[200]

Do the underwriting rules used to write the county's insurance plan have to be released?
No. The underwriting rules are considered proprietary information and not required to be released.

Does the county have to release records the actuarial report used to determine the cost of providing certain benefits in its self-insurance program?
No. The actuarial report would likely be considered a proprietary statistical plan that is not required to be released.

🕮 EXEMPT RECORDS: WHERE PUBLIC ACCESS MAY BE WITHHELD TEMPORARILY

The records below are ones that may be kept confidential for a limited amount of time, but ultimately must be released.

Records of Pending Investigation of Law Enforcement, Prosecution or Regulatory Agencies

Public disclosure is not required for records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, except that initial police arrest reports and initial incident reports must be released. Once all direct litigation involving an investigation or prosecution is final, or otherwise terminated, the records must be released. This exemption also does not apply to records in the possession of a county that is the subject of the pending investigation or prosecution.[201]

May initial arrest reports be withheld?
No. Initial arrest reports must be released under the open records law.

What if the initial arrest report contains information that identifies the name of a rape victim?
Any information that identifies the rape victim may not be disclosed.[202] If an initial arrest report contains identifying information, then such information should be redacted prior to release of the report.

Must a county disclose records of a pending investigation or prosecution of a violation of a county regulatory ordinance, such as its soil erosion and sedimentation control ordinance?
The open records statute does not address this subject directly. However, since the county is acting in a regulatory capacity when it enforces soil erosion and sedimentation control or other regulatory ordinances, it is reasonable to assume that documents, other than the initial report, need not be disclosed under the open records law before either the investigation or prosecution has become final or has been terminated.

Records of Confidential Employee Evaluations

Public disclosure is not required for records consisting of confidential evaluations submitted to or examinations prepared by a county in connection with the appointment or hiring of a public officer or employee.[203]

Records of Personnel Investigations

Public disclosure is not required for records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the county or an officer for action or the investigation is otherwise concluded or terminated. However, this exemption should not be interpreted to make these investigatory records privileged.[204]

If a county employee is terminated for misconduct on the job, does the county have to release the evidence and documents considered during the investigation?
Yes. However, the county does not have to release the documents until ten days after the investigation has been completed.

If a department head is investigated for, but later cleared of, sexually harassing an employee, must the county release the documents used in the investigation and the name of the employee who reported the incident if requested by the local newspaper?
Yes. The documents used in the investigation, including the name of the employee who was allegedly harassed, become public records ten days after the investigation has been completed.

Are criminal conviction records of prospective employees of the county fire department open records?
No. Criminal conviction data obtained by the fire chief from the Georgia Crime Information Center are not public records.[205]

Records About Future or Potential Purchase of Real Estate by the County

Public disclosure is not required for real estate appraisals, engineering or feasibility estimates or other records made for or by the county relative to the acquisition of real property until the property has been acquired or the proposed transaction has been terminated or abandoned.[206]

If a county obtains a real estate appraisal or environmental study on a parcel of land that the commissioners are considering purchasing, must it release the documents to the seller of the property under the open records law, if requested? What if the newspaper requests the documents?
Regardless of who makes the request, the county does not have to release the documents until the property is purchased or the board of commissioners decides not to purchase the property. The exemption applies to engineering, feasibility estimates and other records created in conjunction with the acquisition.

If a county obtains an appraisal on road equipment or a computer system, must it disclose the appraisal if requested by another vendor of the same product?
Yes. Unlike acquisition of real property, appraisals and studies on personal property and equipment obtained by the board of commissioners are open records subject to disclosure.

If a county decides to sell a county administration building and obtains a real estate appraisal to determine its value, must it release the appraisal to interested purchasers who make an open records request?
Yes. There is no exception for appraisals obtained for the sale of real property by the county.

Pending Bids and Proposals

Public disclosure is not required for pending, rejected, or deferred sealed bids or sealed proposals and related detailed cost estimates until the final award of the contract is made, the project is terminated or abandoned, or the county takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.[207]

If a county receives an open records request by a prospective bidder to review bids submitted by other vendors prior to the date of the bid opening, must the county release the information?
No. The contents of the bids do not have to be released until the board of commissioners votes to award the bid (or to reject all bids).

Does a county have to release proposals received for construction of a new jail?
Proposals received on construction do not have to be released until the county awards the project or the project is terminated.[208]

May a board of commissioners keep a contract confidential until it is signed?
No. There is no language in the law that authorizes a county to withhold a proposed or unexecuted contract from public view unless it has been sealed.

Records Identifying Applicants for County Manager/Administrator and Other Executive "Agency" Heads

Public disclosure is not required for records identifying individuals applying for or under consideration for employment or appointment as executive head of a county or "agency." However, at least 14 calendar days prior to the meeting where the final action or vote will be taken on the position of executive head of a county, all documents concerning as many as the three best qualified applicants persons under consideration must be available for inspection and copying.

Before releasing documents on the top applicants, the county may allow any of these applicants to decline being considered further for the position rather than have documents pertaining to them released. In that event, the county must release the documents of the next most qualified person under consideration who does not decline the position.

If a county has conducted it's hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with the open meetings law, then it is not required to delay final action on the position.

The county is not required to release records of other applicants or persons under consideration, except at the request of that person. Upon request, the county must furnish the number of applicants and the composition of the list by such factors as race and sex. The county is not allowed to avoid these requirements by the employment of a private person or agency to assist with the search or application process.[209]

What employment positions are covered by this exemption?

Any "executive head" of an "agency" is covered by this subsection. Although "executive head" is not defined in the law, the position of county manager, county administrator, department head, development authority director, and similar positions would clearly be subject to the requirements of this exemption. Note that the term "agency" includes every county department, agency, board, bureau, office, commission, authority, or similar body.[210] Therefore, the provisions may also apply if the county has an "executive head" of any of these county "agencies."

What procedures must a county follow to hire a new county manager?

A county has two options: (1) conduct the hiring process in a confidential manner; or (2) conduct the hiring process in the open.

If the county decides to conduct the hiring process in a confidential manner, it may cloak the identity of the applicants for the vacant position. Generally, this is done to protect applicants from retribution from current employers. Pursuant to an exception in the open meetings law,[211] the board of commissioners may interview candidates in executive session. Once the board has identified up to three of the best-qualified applicants that it is seriously considering hiring, it must inform these applicants that their names will be publicly released if they choose to continue to seek the position. Any of the applicants may decline to have their names publicly released. However, doing so bars them from pursuing the position any longer. The board must then wait 14 days after releasing the names of the finalists to the public before making a final decision to hire one of the finalists. If the board hires a manager at the expiration of that 14 day period, it must be from the list of candidates released to the public. The county cannot hire one of the applicants whose records were withheld from the public.

Alternatively, a county can conduct the hiring process in public and make all records available to the public for all of the candidates. If that is the case, there is no need to wait 14 days to make a hiring decision and the county can choose from any of the candidates that applied rather than just the top three.

Regardless of which procedure is used, the county must keep a record of the number of applicants and the composition of the list by such factors as race and sex. This record must be disclosed upon request.

If there is only one applicant for the position of county manager and the board of commissioners would like to hire him or her, must the board wait 14 days to make the final decision?
If the name of the applicant was not made public during the application process and the board interviewed the candidate in executive session, then the board must wait 14 days to hire the applicant (assuming that he or she decides to continue to seek the position after being notified that the board must release his or her name). If the application and interview process was conducted entirely in the public, then the county would not have to wait the 14 days.

If the names of all of the applicants for county manager are available to the public, but are never requested, must the board of commissioners still wait 14 days to make the final decision to hire the best candidate?
As long as the hiring process was always open to the public (i.e., without conducting interviews or discussing or deliberating in executive session), then the county does not have to wait 14 days merely because no citizens or newspaper requested the names of the applicants.

What if the board of commissioners has more than three qualified candidates for the position of county manager who are being seriously considered?
While the board is only required to release the names of up to three candidates, it may release the names of additional finalists.

What if the board of commissioners only has two qualified candidates out of ten applications that it is considering for the position?
The board is only required to release the names of up to three qualified candidates. The board is not required to include the name of any individual who is not being seriously considered as a candidate merely to provide three names.

What happens if, after the expiration of the 14 day waiting period, the board of commissioners does not want to hire any of the three finalists whose names were publicly released?
The board does not have to hire any of the three finalists. If there are other applicants who did not initially make the final top three, then the board must recommence the process of selecting finalists, receiving permission to release the names, and waiting 14 days. Alternatively, the board can recommence the hiring process in an open manner.

Must any information be released about the other applicants for county manager?
The number, sex and race of all of the applicants must be released if the information is requested by the press or an individual. Note, however, that any applicant can request that records pertaining to his or her candidacy be released, in which case the county must make them public along with the top three candidates' records.

If a board of commissioners hires a private employment agency to receive resumes and screen candidates, can it avoid the requirements of the open records law?
No.

Records with Historical Research Value

Public disclosure is not required for records that are of historical research value that are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of the records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption does not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia.[212]

If a resident donates correspondence and records of a historical nature on the condition that the documents not be made public until after his or her death, must the county library release the documents under the open records law, if requested?
If the documents have historical research value and were not prepared in the course of the operation of government (i.e., they are not commission meeting minutes, deed records, warrants, county official correspondence, etc.), then the county library may honor the request for 75 years.

If the grandchild of a former county clerk donates commission minutes from the 1930s to the county, must the county observe the grandchild's request to keep the minutes confidential?
No. Because the records relate to the operation of county government, they must be released.

🕮 MISCELLANEOUS EXEMPTIONS

The General Assembly

Public disclosure is not required for records that are related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office. This exception does not apply to records related to the provision of staff services to any committee or subcommittee or to any records that are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly.[213]

Records Containing Farm Water Use

Public disclosure is not required for records of farm water use by individual farms as determined by water-measuring devices installed pursuant to O.C.G.A. §§ 12-5-31 or 12-5-105. However, the compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms are subject to disclosure.[214]

Research by Institutions of Higher Education

Public disclosure is not required for any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, 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, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This exemption applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works.[215]

Records Regarding Public Education Testing Materials/Athletic Associations

Unless otherwise provided by law, public disclosure is not required for records consisting of questions, scoring keys, and other materials, constituting a test that derives value from being unknown to the test taker prior to administration, which is to be administered by an agency. This includes, but is not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system. Reasonable measures must be taken by the owner of the test to protect security and confidentiality. The State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These foregoing limitations should not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.[216]

Participants in Research by State Departments of Health or State Institutions of Higher Learning

Public disclosure is not required for records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity.[217]

Office of Legislative Counsel

Communications between the Office of Legislative Counsel and members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of these public officers is privileged and confidential. In addition, these communications, and records and work product relating to these communications, is not subject to inspection or disclosure under the open records law or any other law or under judicial process. However, this privilege does not apply where it is waived by the affected public officer or officers. This privilege is in addition to any other constitutional, statutory, or common law privilege.[218]

🕮 ENFORCEMENT OF THE OPEN RECORDS LAW

Failure to properly release public records can result in a civil action and a criminal action being filed by the Attorney General, or a private person.

Filing an Action to Enforce the Open Records Law

Superior courts have jurisdiction over actions against persons or agencies having custody of records open to the public to enforce compliance with the open records law in law or in equity. Actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General has the authority to bring actions, in his or her discretion as may be appropriate to enforce compliance with the open records law and to seek either civil or criminal penalties or both.[219]

What happens if the records custodian or other person with custody of county records refuses to give access to requested records in a timely manner?
A criminal or a civil action may be filed in superior court against the records custodian or the county.

Can a county clerk or other employee be sued for an open records violation?
Yes. If the county clerk or any other employee that has custody of requested records and knowingly and willfully fails or refuses to provide access to those records or frustrates or attempts to frustrate access to records, then a criminal action may be brought against the county clerk, as well as the county.

Who can bring legal action to enforce the open records law?
An action may be brought by the attorney general, the district attorney or a private person in the superior court of the county where the alleged violation takes place. Oftentimes, a newspaper or other media outlet will initiate the complaint.

When may an action against a county official for violation of the open records law be brought?
An action may be brought after express refusal to respond to an open records request has occurred, or, in the event of failing to respond to a request, after the three day time period for response has passed. Unlike the open meetings law, there is not a specific deadline for filing a challenge to an alleged open records law violation. In general, non-criminal claims against the county must be brought within one year[220] and misdemeanor charges may be brought at any time within two years of the violation.[221]

Can the county be sued in magistrate court for an open records violation?
No. Actions for alleged open records law violations may only be brought in the superior court. They may not be brought in municipal court, magistrate court, probate court, state court or any other lower court.

Can a superior court judge issue an injunction requiring the county to provide records under the open records law?
The law gives the superior court jurisdiction "in equity," which means that remedies such as injunctions may be obtained.

Criminal Prosecution of Open Records Law Violations

A person alleging a violation of the open records law may ask a judge of the superior court, state court or probate court to issue a citation in the same manner that an arrest warrant for a peace custodian is issued.[222] The records custodian or other defendant named in the case may not be arrested before trial. However, a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.[223]

How is an open records law violation prosecuted?
A hearing before the judge of the superior court, state court or probate court must be held to determine whether a citation for a violation of the open records law should be issued against the records custodian.[224] The hearing may be requested by the Attorney General, the district attorney, the solicitor or any other individual or party alleging a violation of the open records law. If the citation is issued, it will be personally served on the records custodian. At least five days before the arraignment, the court clerk will mail a notice of the arraignment date to the records clerk and his or her attorney, if any.[225] At the arraignment, the charge against the records custodian will be read and the records custodian must enter a plea of guilty, not guilty or nolo contendere.[226] A plea of nolo contendere means that the records custodian does not dispute the truth of the charges against him or her. Although it is neither a plea of guilt or innocence, it has a similar effect as a plea of guilty. If the records custodian enters a plea of guilty or nolo contendere, the judge may impose a fine of up to $1,000 for a first offense (or $2,500 for a subsequent offense within a one year period). If the records custodian enters a plea of not guilty, then the case will go to trial.

Will a county clerk be arrested if he or she fails to comply with the open records law?
The court may issue an arrest warrant only if the county clerk fails to attend the arraignment or trial.

Criminal Penalty for Open Records Law Violations

It is a misdemeanor for a records custodian, county official, or any other person, or entity to knowingly and willfully violate the open records law by knowingly and willfully: (1) failing or refusing to provide access to records not subject to an open records exemption; (2) failing or refusing to provide access to public records within the time limits established by law; or (3) frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review. Conviction of an open records law is punished by a fine up to $1,000 for the first violation. Conviction of additional open records law violations within a 12 month period may result in a criminal fine up to $2,500.

In addition, county employees or officials that destroy records for the purpose of preventing their disclosure may be subject to prosecution as a felony punishable by imprisonment of two to ten years.[227]

It is a defense to any criminal action under the open records law that a person has acted in good faith in his or her actions.[228]

Are there criminal penalties for violations of the open records law?
Yes. Failure to comply with the open records law is a misdemeanor.[229] Additionally, elections superintendents who willfully refuse to allow public inspection of certain records in their custody may be found guilty of a misdemeanor.[230] Furthermore, the failure to release materials, such as field cards, containing information gathered by the personnel of the board of tax assessors is a misdemeanor.[231]

What happens if the records custodian refuses to release public documents or refuses to allow a citizen to review public documents?
If the judge determines that the failure to provide available documents within three business days is knowingly and willfully done, then the records custodian may be found guilty of a misdemeanor and charged a $1,000 fine.

If a records custodian was fined for violating the open records law and is convicted of a second violation six months later, how much can the custodian be fined?
The law allows for a fine of up to $1,000 for the first fine and additional fines of up to $2,500 for each additional violation made within a 12 month period from the date the first penalty was imposed.

What happens if the records custodian destroys records so that they do not have to be turned over to the person making the request?
Records custodians who destroy records for the purpose of preventing their disclosure can be prosecuted for a felony punishable by two to ten years in a state prison.[232] This does not apply to records custodians who are destroying records in accordance with a properly approved record retention schedule.

Civil Penalty for Open Records Law Violations

A civil penalty may be imposed by the court in any civil action brought against any person who negligently violates the open records law in an amount not to exceed $1,000 for the first violation. A civil penalty not to exceed $2,500 per violation per person may be imposed for each additional violation committed within a 12 month period from the date the first penalty or fine was imposed.[233]

What are the different penalties and possible results of violating the open records law?
Officials who illegally withhold public records may be found guilty of a misdemeanor punishable by a $1,000 fine, as well as a civil penalty up to $1,000. If records are destroyed in order to prevent disclosure, it is a felony with a sentence of two to ten years.

Defense Against Lawsuit for Releasing Information Under the Open Records Law

Any county, agency or person who provides access to information in good faith reliance on the requirements of the open records law will not be held liable in any action on account of that decision.[234]

Can a county clerk be sued for providing requested information that should have been kept confidential?
While a lawsuit may be filed, if the judge finds that the county clerk in good faith believed that he or she was required to provide the information under the open records law, then the clerk will not be liable.

Court Costs and Attorneys' Fees

In any action brought to enforce the open records law, if the court determines that either party acted without substantial justification by not complying with the law or in introducing the litigation, the court must award attorney's fees and other reasonably incurred litigation costs in favor of the complaining party, unless it finds that special circumstances exist. Whether the position of the complaining party was substantially justified must be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.[235]

Who pays for the legal defense of a county records custodian sued or prosecuted for an open records law violation?
As with other lawsuits filed against county officials or employees, the board of commissioners is authorized to cover the cost of defending lawsuits.[236] Additionally, the defense of these cases may be covered by the county's insurance policies, if any.

Does the county have to pay attorneys' fees awarded to someone who files an open records lawsuit?
In order for an individual to obtain attorneys' fees from the county, there is a two-prong test. First, the plaintiff must show the records custodian or county violated the open records law by not producing the requested records in a timely fashion. Second, it must be shown that the county "lacked substantial justification" for violating the open records law. For instance, the county may not have provided public

records within three days because the courthouse was flooded. The court would likely find that the county had substantial justification for failing to comply and would not make the county pay the other party's attorney's fees.

What can county officials do to avoid paying attorneys' fees to the plaintiff in an open records law challenge?
The records custodian should be very thorough when reviewing the records responsive to the request and very accurate when identifying the legal authority for an exemption. If there is any question as to whether a record should be disclosed or the legal authority for an exemption, the records custodian should consult with the county attorney. If the records custodian follows the advice of the county attorney, the judge may be more likely to find that the county acted with justification in refusing to release a document.

Can a county get the opposing party to pay the county's attorneys' fees if the county wins an open records challenge in superior court?
Yes. Unlike open meetings law challenges, the judge may order the plaintiff to pay the county's attorney's fees if the plaintiff acted without substantial justification in bringing a lawsuit against the county challenging the denial of a record.