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Public Records

One of the most challenging public policy issues of our time is the juggling act between access to public records, personal privacy, and limited personnel and resources in local government administration.

In the case of *Randolph v. State ex rel. Collier, Pinckard and Gruber*, 2 So. 714 (Ala. 1887), the Alabama Supreme Court stated, "The right of free examination is the rule, and the inhibition of such privilege, when the purpose is speculative, or from idle curiosity, is the exception." With that in mind, this article discusses access to public records and the exceptions to the privilege of a citizen to view those records.

Additionally, this article contains material discussing the very important case of *Blankenship v. Hoover*, 590 So.2d 245 (Ala.1991). *Blankenship* concerns the rights of citizens to obtain public records maintained by municipalities. This article explores this subject in depth and explains how the holding in *Blankenship* affects municipal rights to grant access to records. Additionally, the article discusses the required procedures for responding to public records requests. And finally, the article explores the issue of allowing attorney's fees in public records disputes.

Access to Public Records

It is probably best to assume as a starting point that all records the city keeps are public. Sections 36-12-40 and 36-12-41, Code of Alabama 1975, guarantee every resident the right to inspect and make copies of all public records, unless otherwise expressly provided by statute.

Throughout this article the terms citizen and resident will be used synonymously. It is important to note the significance and legal history of these terms. Originally, Section 36-12-40 was thought to only gave "citizens" the right to access public records. However, the United State Supreme Court in upholding Virginia's access to open records to citizens of Virginia, interpreted Section 36-12-40 to limit access of Alabama public records to Alabama citizens contrary to the Attorney General's interpretation. *McBurney v. Young*, 133 S.Ct. 1709 (2013). In Act 2024-278, the Alabama Legislature removed all doubt by changing the word citizen to resident and allowing the city to request reasonable evidence to establish proof of residency such as, but not limited to, an Alabama driver license or voter registration. A public officer may respond to public records request made by nonresidents, but a public officer's decision to respond to the request does not operate as a waiver of the right to deny other and future requests made by nonresidents. Section 36-12-44(f), Code of Alabama 1975.

The public record law does not state which records are considered public records. Generally, the term "record" is given an expansive meaning, such as the definition found in Section 41-13-1, Code of Alabama 1975. There, public records are defined to include all "written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business." Originally, Section 36-12-40 used the phrase public writing; however, the statute was amended and now uses the term public record. *See Act 2024-278*. The Alabama Supreme Court has held that the terms "public record" and "public writing" are synonymous and in this article, they will be used interchangeably. These sections are broad and provide little guidance for city clerks who must determine whether to release a particular record. In addition, this list is not all-inclusive, and each record must be examined individually to determine whether the public is entitled to access, looking to case law and Attorney General's opinions for help.

In *Stone v. Consolidated Publishing Co*., 404 So.2d 678 (Ala. 1981), the Alabama Supreme Court held that public writings as defined by Section 36-12-40 are those records which are reasonably necessary to record the business and activities of public officers "so that the status and condition of such business and activities can be known by our citizens."

The key element in this statement is that the record be "reasonably necessary." It is clear that the right of access goes far beyond those records that the law requires a public official to keep. The fact that a record is not required does not mean that if a record is kept it is not a public record.

A letter or any other written, typed, or printed document received by a public official in pursuance of law is a public record. The final document generated in response to the taking of notes, if any, is a public record, but the notes themselves are not public records. AGO 2007-0031.

In *Excise Commission of Citronelle v. State*, 60 So. 812 (Ala. 1912), the Alabama Supreme Court held that a person has the right of inspection as the representative of one with an interest. However, nothing in Alabama's public records law is construed to permit any party to a pending or threatened action, suit, or proceeding to obtain information regarding a matter relevant to the pending or threatened action, suit, or proceeding in lieu of the proper discovery methods provided under applicable rules of procedure. Section 36-12-46, Code of Alabama 1975. A newspaper may request access to records necessary to keep the public informed. *See, Miglionico v. Birmingham News Co.*, 378 So.2d 677 (Ala. 1979).

In *Chambers v. Birmingham News*, 552 So.2d 854 (Ala. 1989), the Alabama Supreme Court held that there is a presumption in favor of a record being public, except in narrowly construed cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will be unduly affected. The court also held that the party refusing to make a disclosure bears the burden of proving the records should be withheld from public scrutiny.

Of course, the right to inspect and copy records is not absolute. Personnel records often contain information that reflects negatively upon an employee's character and, if released, may subject the city to liability for defamation. Licensing information can be used by competitors to gain an unfair business advantage. If confidential police records become public, ongoing investigations may be ruined and lives endangered. For example, the uniform incident/offense report is a public record, although portions of it may be withheld from public disclosure to protect police investigations, witnesses, innocent persons and the right of the accused to a fair trial.

As the Eleventh Circuit Court of Appeals pointed out in *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983), when the right to inspect and copy records interferes with the administration of justice, it may have to be curtailed. The law has seen fit to permit access to many records, while at the same time protecting individual rights to privacy and protecting the orderly operation of municipal government.

In *Clerk of the Municipal Court of Cordova v. Lynn*, 702 So.2d 166 (Ala. Civ. App. 1997), the Alabama Court of Civil Appeals held that a citizen did not have the right to inspect unedited court dockets involving youthful offenders. However, the Attorney General held that if a juvenile court, after a hearing, determines that a housing authority has a legitimate interest in obtaining a juvenile record, then the court may authorize a local police department to furnish the information to the authority. AGO 1997-0016.

The Alabama Supreme Court applied a test in *Stone v. Consolidated Publishing Co*., 404 So.2d 678, 681 (Ala. 1981), to aid in determining whether a record should be released to the public. There, the court stated that "Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference."

This is the same test that all custodians of records must use to determine whether to release a record. If the right to access unduly interferes with government business, then the custodian is justified in restricting access. If not, then the record is public, unless some other restriction on access applies.

Generally, municipal officials and employees have no greater rights to inspect records than do members of the public. Only those officials and employees who must view a record that is not public should be allowed access. While the council, acting as a whole, has the right to request to see certain documents, individual councilmembers must demonstrate their interest in order to review records, just like private citizens. The Attorney General's office held that the mayor may review all documents of the business of the town necessary for him or her to carry out his duties as mayor and manage the affairs of the town. However, the review of documents must be for a legitimate purpose and the integrity of the record must be maintained. AGO 2000-0053.

In an AGO to Hon. Cooper Green, January 8, 1975, the Attorney General ruled that information in a county computer system is a matter of public record and access to the public is mandatory. This opinion would apply to municipalities as well.

In *Bedingfield v. The Birmingham News Co*., 595 So.2d 1379 (Ala. 1992), the Alabama Supreme Court held that an internal audit conducted by the city of Birmingham was a public record.

The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under the Open Records Law. Section 36-12-40, Code of Alabama 1975. Once the warrant has been executed, the complaint supporting the same becomes public record. A custodian of public records may recoup reasonable costs incurred in providing documents to a citizen including, where necessary, costs for retrieving and preparing the records and the actual cost of copying the records. AGO 2008-030 and AGO 2013-0040.

A common question is whether tape recordings made at council meetings are considered public records. The answer to

this question probably depends on the nature of the tape recording. If a municipality maintains the recording at city hall and uses it as an official document, it should be treated as a public record. If the tape is used merely to aid the clerk in typing the minutes, there is no need for this to be considered a public record. The typed minutes are the official record of what transpired at the meeting.

The Local Records Retention Schedule adopted by the Local Government Records Commission supports this conclusion. The schedule considers tapes of meetings that are kept merely as an aid to the creation of minutes as "temporary records," stating:

> Audio or video recordings provide a verbatim account of debate and public input at meetings of the municipal council and municipal boards, commissions, or similar bodies. While offering a verbatim account of proceedings in case of controversy at a council meeting, or an appeal following a board's decision, they are normally used only as an aid in preparing the minutes. Therefore, their retention (revised in conformity with other RDAs) is required only until the minutes are approved.

Municipalities can obtain the most recent copy of the Records Retention Schedule from the League, the Department of Archives, or online at: https://www.archives.alabama.gov/manage/local/.

Limitations and Restrictions on Access

There are sound policy reasons for restricting access to those records that are not public. There are liability issues to contend with if private information becomes public. Businesses are entitled to confidentiality concerning information that might give an unfair business advantage. Further, confidentiality encourages honest reporting for sales tax and licensing purposes, and, statutory provisions, such as Section 40-2A-10 of the Code dealing with sales and use tax return information, limit access to certain records.

The most common judicially created limitation on access is that the records custodian may require the person seeking access to show that he or she has a direct, legitimate interest in the document sought. *See, Brewer v. Watson*, 71 Ala. 299 (Ala. 1882). There is no right of inspection when it is sought to satisfy a whim or to create scandal or for any other improper or useless purpose. No one has the right to demand to see every record maintained by the municipality without showing why he or she is interested.

Also, a municipality may set reasonable restrictions on the time and place of inspection, generally at city hall and during regular business hours. However, the limitation must be reasonable.

Also, a municipality has the right to charge a reasonable fee for making copies of the record. While the custodian may allow the person to make a copy, the better practice is for the custodian to make the copy. The Attorney General's office held that a public entity may recoup reasonable costs incurred in providing public documents, including staff research, preparation and time, but not costs for an attorney's time in reviewing potentially confidential documents. What constitutes "reasonable costs" is a factual determination that must be made by the governing body. AGO 2008-0073.

When a person appears before the records custodian at the proper time and place and gives a legitimate reason, the custodian cannot assume that the person is seeking the record for some other illegitimate purpose and deny access. *See*, Section 36-12-41, Code of Alabama 1975 and *Excise Commission of Citronelle v. State*, 60 So.812, 814 (Ala. 1912). Of course, the custodian may still deny access to records if disclosure would be detrimental to the public interest. Access to public records cannot be restricted on the grounds that the individual plans to use the records for personal gain. A private person may use public records on the internet, unless the records are protected by copyright laws. AGO 1998-0157.

Additionally, access cannot be denied because the person requesting access has been guilty of some past impropriety or that the information will be used in litigation against the municipality or a municipal official. *Brewer v. Watson*, 71 Ala. 299, 306 (Ala. 1882).

Section 36-12-40, Code of Alabama 1975 does not authorize a citizen to shift to the custodian the tasks of inspecting them and identifying the ones to be copied or the expense of copying those and does not require the custodian to undertake the burden and expense of mailing or otherwise delivering the copies. *See Ex parte Gill,* 841 So.2d 1231 (Ala. 2002). Under no circumstances, however, should the individual be allowed to remove the original document from city hall. This is a good rule to follow regardless of who is inspecting the record.

In *Stone v. Consolidated Publishing Co*., 404 So.2d 678, 681 (Ala. 1981), the Alabama Supreme Court discussed the types of records where the harm done by disclosure outweighs the right to access: "Recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations and records the disclosure of which would be detrimental to the best interests of the public."

Time sheets of employees are public records. Certain sensitive information, however, that may be contained in those

records is not public record. The custodian of records should redact sensitive personnel information. The custodian of records must make the records available for copy and inspection during the normal business hours, within a reasonable period of time that the request was made, and may do so in such a manner as to "prohibit work disruption." AGO 2008-0073.

Section 11-98-12, Code of Alabama 1975 places procedures restricting information relating to a 911 telephone call or of a written transcript of a 911 call.

Under the Homeland Security Act of 2002, all state Sunshine Laws are preempted; therefore, Alabama's state disclosure, open records or freedom of information laws are preempted to the extent they require access to a record that the Department of Homeland Security considers to be "critical infrastructure information." *See*, 6 USCA, Section 131(3). Additionally, state courts do not have the power to require the release of that data. *See*, 6 USCA, Section 133. Similarly, Alabama law prevents access to records, information or discussions relating to security plans, procedures or other security related information from public access. Section 36-12-40, Code of Alabama 1975.

Clearly, it would be impossible to lay down a hard and fast rule that applies in all situations. The custodian must review each request individually and determine whether access should be permitted. Where a record contains both confidential and public material, the custodian, if possible, should delete the private information and release only the information that is public.

Tampering with the Public Record

Each public official or employee who handles governmental records should be aware that certain actions concerning the public record have been made criminal offenses by the legislature. Such actions include falsifying entries or falsely altering any governmental record. Intentionally destroying, mutilating, concealing, removing or otherwise substantially impairing the truthfulness or availability of any governmental record is also an offense. Additionally, it is unlawful for any person who does not have the authority to have possession of a governmental record to knowingly refuse to return the record upon proper request of a person lawfully entitled to receive the record for examination or other purposes. Section 13A-10-12, Code of Alabama 1975. In all cases in which it is not otherwise expressly provided by law, when any office is vacated, except by the death of the incumbent, all books, papers, property and money belonging or appertaining to such office must, on demand, be delivered over to the qualified successor. Section 36-12-20, Code of Alabama 1975.

The Records Custodian

The official in charge of a record acts as a trustee, representing the interests of those with the right of access to the records. In *Brewer v. Watson*, 71 Ala. 299 (Ala.1882), the court pointed out that it is the custodian's duty to preserve records against all impertinent intrusion and allow access to those who can claim that access will promote or protect a legitimate interest. Public records must be kept in the office where the records were created or in a depository approved by the Local Government Records Commission. AGO 1991-0249. If an off-site depository has been approved, the transferring official who follows the guidelines set by the commission will not be liable for any loss or damage to records stored in the off-site facility. AGO 1998-0062.

The duty of the records custodian was the key issue in *Blankenship*. In this case, the city of Hoover adopted a policy requiring anyone requesting access to public records to make this request in writing.

The city provided forms for this purpose. The form required the person making the request to give his or her name, to include the date the request was filed, to list the records sought, and to give a reason for asking to view the records. The bottom of the form – set aside for official use – provided space for the records custodian to check whether the request was granted or denied. In the event of a denial, the custodian had to list reasons for denying the request.

The city of Hoover developed its policy after an experience in late July 1990. At that time, plaintiffs came to the financial department and requested numerous records. These records were provided, and plaintiffs were given space to review them. Plaintiffs made approximately 180 copies on Hoover's copy machine. Hoover did not charge for making these copies. Hoover's finance director testified that while the records were being copied, plaintiffs tore pages from the books and left the books in a damaged condition. One of the plaintiffs, while denying doing any damage, admitted that several pages came loose while they were making copies and that the plaintiffs folded and replaced them.

Later, the plaintiffs made an additional request for records from the city and refused to give any reason for their request. Among the records requested were all W-2 and 1099 forms showing the salaries and reportable payments by the city of Hoover since January 1, 1988. The city stated that it would provide the records, with the possible exception of the W-2 and 1099 forms, if the plaintiffs would fill out the city's form. The plaintiffs refused and sued, seeking the requested records and an injunction that would permit them access to the records without stating a reason.

The trial court ruled in favor of Hoover, finding the policy reasonable. The court stated: "Hoover may [require persons

requesting public records to fill out a form in the nature of the one offered in evidence in this case] asking why a person is seeking public records so long as the question is not intended to dissuade people from seeking the records and is not used in the ordinary course as a means to prevent people from having access to such records ..." "Hoover may establish a reasonable policy which limits the number of persons reviewing records at any one time as such limits may be required by its physical facilities and may limit the records reviewed at one time so as not to unduly interfere with the normal operation of city government."

The trial court also found that Hoover did not have to produce its W-2 forms because the forms disclosed "whether or not an individual employee has elected to participate in income-deferral plans, insurance plans, or similar benefits which are more personal than public in nature." However, the court found that the 1099 forms did not contain any personal information and should be provided. The court stated that, the rate of pay, even the gross pay of individual employees, must be made available upon request.

The Alabama Supreme Court affirmed. The court was impressed with the fact that Hoover did not apply its policy to prevent access to records, nor did the policy discourage requests. The court held that the policy merely permitted Hoover to ensure that inspections were performed by those with a legitimate interest in the requested records and that the integrity of the records was maintained without undue interference.

Procedure for Responding to Public Records Requests—Act 2024-278

Act 2024-278 enacted an elaborate procedure for municipal clerks to follow when responding to public records requests. The primary intent of the act is to provide timelines for responding to public records requests depending on the substance of the request. The act categorizes requests into two different types of requests. First, the act defines a standard request as any request that will take less than 8 hours to process and fulfill. On the other hand, a time-intensive request is defined as any request that will take more than 8 hours to process and fulfill.

Generally, the same rules apply to each type of request; except, the primary difference is the required time to respond. For standard requests the city has 10 business days from the receipt of the request to provide an acknowledgement of receipt to the requestor. The act does not specify the form in which the acknowledgment must be provided. Once a standard request has been acknowledged, the city has 15 business days to provide a substantive response to the requestor.

A substantive response can take many forms such as providing the documents with or without certain contingencies or denying the request for a recognized reason. For example, a substantive response can be a statement that the city is prepared to provide the requested public records to the requester upon payment of a reasonable fee or that the request is denied because the documents sought do not exist or are confidential and not subject to public disclosure. The form of the substantive response will be highly dependent on the substance of the request and circumstances surrounding the request.

For standard requests, the city can extend the time to respond in 15-business day increments upon proper notice to the requestor. That does not mean the request can be extended in perpetuity, because after the earlier of 30 business days or 60 calendars days following either the city's acknowledgement of the request or the payment of the estimated fees a rebuttable presumption that the request has been denied is triggered. Generally, once a request is considered denied the requestor can sue challenging the legitimacy of the denial.

For time-intensive requests the city has 10 days from the receipt of the request to provide an acknowledgement to the requester that the request has been received. After acknowledgment the city has 15 business days to notify the requestor that the request has been classified as a time-intensive request. If the requester elects to proceed with a time-intensive request, the city has 45 business days to provide a substantive response to the requestor. For time-intensive requests, the city can extend the time to respond in 45-business day increments upon proper notice to the requestor. However, after the earlier of 180 business days or 270 calendars days following the requester's election to proceed with a time-intensive request a rebuttable presumption that the request has been denied is triggered. The act also provides that the rebuttable presumption of denial is not triggered for both types of requests in the following scenarios:

- The request is not proper or the public officer is not obligated or required to respond;
- The public officer has responded in part;
- The public officer and requester have reached an agreement regarding the time or substance, or both, of the response;
- Negotiations are ongoing between the public officer and the requester;
- The public officer has reasonably communicated the status of the request to the requester.

The city also may require the requester to pay a reasonable fee before providing a substantive response to the requester. The city is not obligated to respond to a public records request that is vague, ambiguous, overly broad, or unreasonable in

scope nor is the city required to create a record if the requested record does not already exist.

The city is required to maintain a log for keeping track of currently pending time-intensive requests. For each such currently pending request, the log shall identify the name of the requester and the date of acknowledgment. The log shall be a confidential document that is not subject to a public records request.

The act further provides written procedures for responding to public records requests that will apply if written procedures are not adopted by the city. Keeping in line with the *Blakenship* case, the provided written procedures contain a sample standard request form that may be adopted. In addition, the act authorizes cities not to respond to a public records request that is not made pursuant to the city's written procedures.

Something the act does not do is modify the definition of a public record despite the act changing the term "public writing" to "public record". The Alabama Supreme Court has determined that the term public writing is synonymous with the term public record. *See Health Care Auth. for Baptist Health v. Cent. Alabama Radiation Oncology, LLC*, 292 So. 3d 623, 628 (Ala. 2019). Therefore, prior Attorney General Opinions and Alabama Supreme Court decisions interpreting the term public writing are still applicable. The bill also clarifies that the city is not required to create a new public record that did not previously exist to respond to a records request and that a request can be denied for being vague, ambiguous, overly broad, or unreasonable in scope. Finally, the bill provides permissible written procedures municipalities can adopt to help facilitate the new public record request requirements.

Attorney's Fees

Several questions have been raised regarding the liability for attorney's fees in public records court cases. As a general rule, the prevailing party in a lawsuit is not entitled to have his or her attorney's fees paid by the opposing party absent a contractual or statutory requirement. However, Alabama courts have recognized that attorney's fees may be awarded in cases where justified by the equities of the case.

In *Bell v. The Birmingham News Co*., 576 So.2d 669 (Ala. Civ. App. 1991), the Alabama Court of Civil Appeals considered the question of whether attorney's fees should be awarded in a case brought to enjoin the city of Birmingham from holding closed sessions to elect the council president and the president pro tempore.

The court began by noting the general rule that awards of attorney's fees are disfavored. However, the court then pointed out that in *Brown v. State*, 565 So.2d 585 (Ala. 1990), the Alabama Supreme Court held that attorney's fees may be justified in a case where the actions of a plaintiff benefit the public at large. In *Brown*, the issue was the lack of verification of traffic tickets before a judicial officer. The court held that the plaintiffs were not entitled to have their convictions overturned. However, because they revealed a serious flaw in the administration of justice in the state, the court held that the plaintiffs were entitled to have their attorney's fees paid. The court stated that their actions conferred a "common benefit" on the public at large.

In applying this "common benefit rule" in *Bell*, the Court of Civil Appeals stated that the citizens of the city of Birmingham benefited by the suit brought by *The Birmingham News*, and, therefore, the newspaper was entitled to have its attorney's fees paid by the city of Birmingham. The court, quoting *Bell*, stated, "It is unquestionable that [*The News'*] attorney rendered a public service by bringing an end to an improper practice."

In *Advertiser Co. v. Auburn University*, 579 So.2d 645 (Ala. Civ. App. 1991), *The Montgomery Advertiser* sued to obtain a copy of a report maintained by Auburn University. The trial court held that the report was a public record; however, the trial court refused to grant plaintiff's request for attorney's fees. The Court of Civil Appeals affirmed, holding that the decision as to whether to grant attorney's fees was within the discretion of the trial judge. The court held that the trial court did not abuse this discretion by refusing to award attorney's fees because there was ample evidence that Auburn University acted in good faith when it refused to turn over the report.

Microfilming of Records

Sections 41-13-40 through 41-13-44, Code of Alabama 1975, provide for the photographing or micro photographing of public records and for the admissibility in evidence of photographed or micro photographed copies of records required to be kept by public officers. Municipalities seeking to microfilm or photograph their records should refer to the statutes for guidance.

Electronic Records

The Uniform Electronic Transactions Act ("UETA") is codified at Section 8-1A-1 through 8-1A-20, Code of Alabama, 1975. Section 8-1A-17(b) provides that the governing body of each municipality may determine by ordinance whether, and the extent to which, an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the municipality shall create and retain electronic records and convert written records to electronic records.

Section 8-1A-18(2) provides that the governing body of each municipality may determine by ordinance whether, and the extent to which, an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the municipality shall send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

Permanent Municipal Records

Certain records of a municipality must be kept permanently. Permanent records include the journal, ordinance books, resolutions, journals of independent agencies and boards of the municipality, general ledgers, cash books, bonds and interest ledgers and records of bonds and coupons destroyed, tax and assessment records, deeds and title papers, records of tax liens, records of securities, budgets and audit reports. Records in addition to those listed above may have local significance as permanent records and should be preserved also.

Disposal or Destruction of Public Records in General

Certain other records may have semi-permanent significance and must be preserved until the reason for their retention has ceased to exist. Official correspondence should be retained at least until the item to which it relates has been acted upon and is no longer of interest or concern. If the correspondence relates to real property of the municipality, then it should be kept permanently.

Knowledge of the statutes of limitations imposed by the Code of Alabama is imperative before public records are disposed of or destroyed. A number of statutes of limitations of actions are found in Sections 6-2-1 through 6-2-41, Code of Alabama 1975. Some of these statutes are more applicable to municipal records than are others, but all should be studied prior to the disposal or destruction of any records. Likewise, statutes of limitations in other sections are of concern to municipal officials.

The law governing the manner of disposing of public records is set out in Sections 41-13-1, 41-13-4 and 41-13-5, and Sections 41-13-22 through 41-13-25, Code of Alabama 1975.

Local Government Records Commission

"Public records" are defined at Section 41-13-1, Code of Alabama 1975. This definition has been included earlier in this article. Section 41-13-5 simply states that "any public records, books, papers, newspapers, files, printed books, manuscripts or other public records which have no significance, importance, or value..." may be eligible for disposal.

Sections 41-13-5 and 41-13-22 through 41-13-25, Code of Alabama 1975, provide a method for disposing of public records which no longer have any significance or value.

Sections 41-13-22 through 41-13-25, Code of Alabama 1975, establish a Local Government Records Commission with the responsibility of determining which county, municipal and other local government records must be permanently maintained and which records may be destroyed after being microfilmed.

Section 41-13-23, Code of Alabama 1975, states that no local government official may dispose of any public record without first obtaining the approval of the Local Government Records Commission.

The Local Government Records Commission consists of 12 members: the Director of the Department of Archives and History, who chairs the Commission; the chief examiner of the Department of Public Accounts; the Attorney General; the secretary of state; one member from The University of Alabama and one member from Auburn University, both of whom are appointed by the head of the Department of History; one probate judge who is not a chairman of a county commission; two chairmen of county commissions who are not also probate judges; one county tax assessor and two city clerks, both appointed by the governor.

Members of the commission receive no salary, but expenses incurred in the performance of their duties may be reimbursed pursuant to Sections 36-7-20 through 36-7-22, Code of Alabama 1975. The commission meets in January, April, July and October of each year and meets upon the call of the chairman.

The Local Government Records Commission is authorized to issue regulations classifying public records and to prescribe a period for which records in each class must be maintained. Further, the code states that any public record, book, paper, newspaper, file, manuscript or tape which is determined to have no significance or value may be destroyed or disposed of upon the recommendation of the custodian and the consent and advice of the Local Government Records Commission.

Local Government Records Commission Records Disposition Schedule for Municipalities

For assistance or to obtain a copy of the records disposition requirements established by the Records Disposition Authority and approved by the Local Government Records Commission, please check the League's website. Additionally, the Alabama Department of Archives and History Government Records Division website has extensive information available at https://www.archives.alabama.gov/default.aspx or you may contact the department via phone at (334) 242-4435.

Attorney General's Opinions and Court Opinions

The Attorney General and the Courts have issued a number of opinions discussing public records. They are listed below.

- A traffic accident report is a public record. AGO 1979-0073.
- Information contained on the front of the Uniform Incident/Offense Report should be available to the public for inspection. AGO 2000-0004.
- The news media has no greater access to police records than that accorded the general public. A police agency may form whatever policy it deems advisable with regard to making its reports available to persons outside the agency, as long as the policy is uniformly applied. Strong policy considerations support a policy of keeping official investigation reports confidential. AGO to Hon. Frank Roberts, under date of August 9, 1976.
- Transcripts of disciplinary hearings held at board meetings not closed to the public are public records. AGO 1986-0095.
- Unless otherwise ordered, court records and contents are public records. AGO 1986-0197.
- Arrest warrants are public records. AGO 1987-0297.
- Building permits filed at city hall are public records. AGO 1987-0333.
- Information concerning names, titles and compensation of county employees is open to inspection by the public. AGO 1988-0117.
- A citizen's right to city's beer tax records should be limited to the amount of tax paid while deleting information obtained by audits or other sensitive internal business information that could be used by competitors to gain an unfair business advantage. AGO 1988-0190.
- Records of a municipal water department are public records. AGO 1988-0389.
- Lists of teachers or other personnel employed by a local board of education are public records. However, the board may refuse to furnish the home addresses of employees on the list. AGO 1988-0390.
- A municipal water works board may provide a list of the names and addresses of its customers to individuals, businesses and organizations and charge a reasonable fee. AGO 1988-0407.
- Contracts of the Huntsville Utilities with municipalities and subdivisions of Madison County are public records. AGO 1997-0254.
- Records concerning criminal investigations may be withheld from scrutiny when the disclosure of the records would compromise pending criminal investigations. AGO 1989-0193.
- Search and arrest warrants become public only after they are executed. AGO 1990-0067.
- Resumes of applicants for the position of county administrator are public unless the resume, contains sensitive material which would cause undue harm or embarrassment to the applicant. AGO 1991-0032.
- Pistol permits kept in the sheriff's office are public records. AGO 1991-0225.
- Records of an E911 district are public. However, information in the database as to names, numbers and addresses should not be disclosed if it will result in undue harm or embarrassment or adversely affect public interests. AGO 1991-287.
- Records of fire districts are public records. AGO 1992-0351.
- The names and addresses of the victims of crimes maintained by the Department of Corrections are not public records. AGO 1992-0268.
- Fire district records maintained as a computer database are public record. AGO 1992-0274.
- The names, titles and compensation of county employees is a matter of public record. AGO 1992-0321.
- A personnel study of county employees authorized by the county commission is a public record. AGO 1992-0321.
- The records of the tax assessor's office are public records which may be accessed during regular business hours. The integrity of the original documents must be maintained without limiting public access. AGO 1992-0335.

- Because of the confidentiality provision of Section 40-9B-6(c), Code of Alabama 1975, members of the Legislature may not view tax abatement agreements filed with the Department of Revenue unless access is granted by the private party involved. AGO 1998-0119.
- The requirement of reasonable access to public records means access during regular business hours where records are kept. AGO 1992-0336.
- A court may place reasonable limitations upon the public's access to records so as not to unduly interfere with the operation of the court clerk's office. The clerk has no duty to notify an attorney when certain types of cases are filed even though the attorney has requested notification. AGO 1992-0154.
- Absent extraordinary circumstances, inspection of municipal tax records, even by the council as a whole, is limited to the amount of the tax paid and only when sought in order to advance the public good. AGO 1994-0184.
- The list of absentee voters filed with the probate judge is a public record. AGO 1992-0263.
- Records of an E911 board are public, except in the case of confidential material which would unduly embarrass or harm an individual or the public interest. AGO 1995-0250.
- Electronically-stored public records must be made available to the public. The custodian may charge a reasonable fee for accessing the information. AGO 1995-0266.
- A municipality may charge a reasonable search fee for the time its personnel spend gathering public information to fill a citizen's request. AGO 1995-0268.
- The inactive voters list must be published in a newspaper which meets the requirements of Section 6-8-60, Code of Alabama 1975. AGO 1995-0301.
- Despite a presumption that records kept by public entities are open to public inspection, sensitive personnel records should be kept confidential. Employees which are the subject of an internal investigation must be afforded all due process protection rights. Where employees have consented, a public agency may sell directories containing addresses and telephone numbers of employees to the public. AGO 1996-0003.
- Any voter information, other that Social Security numbers, on file in the office of voter registration, is available for a fee to anyone requesting the information. AGO 1996-0038.
- Applications for bingo permits and annual financial statements filed with the sheriff of Jefferson County pursuant to Act 80-609 are public records. AGO 1997-0169.
- Resumes of applicants for public jobs must be open to the public. Confidential information on the applications which would harm or embarrass an applicant may be kept confidential, but the organization bears the burden of proving the information should be kept from the public. AGO 1996-0105.
- Individual documents reflecting the opinions of school board members, which are used to compile the board's evaluation of its superintendent, are not public records. AGO 1996-0126.
- Police radio logs are not subject to public disclosure. AGO 1996-0128.
- A public agency may put public records on the internet. The agency may be selective in the records it places on the internet. The agency may sell its digital records, but may only charge a reasonable price based upon its costs in providing the information to the public. The agency may not restrict purchases from reselling public records. AGO 1998-0158.
- Performance evaluations of public employees are public records, but they may only be released if they do not contain sensitive personnel matters. AGO 1999-0258.
- Records of a public waterworks and sewer board or authority are public records as defined in section 41-13-1 of the Alabama Code. Therefore, the water and sewer board of the city of Gadsden may provide its customer list to the board of registrars of Etowah County; however, the water and sewer board is not required to disclose sensitive or confidential information and may regulate the manner in which the list is disclosed. AGO 2000-0102.
- Information contained on the front side of the Uniform Incident/Offense Report is a public record, therefore, should be available for inspection and copying by any member of the public, including investigative reports involving victims of domestic violence to Legal Services Corporation and/or Turning Point. AGO 2000-0197.
- A probate judge may charge a reasonable fee for supplying electronically stored information. AGO 2000-0196.

- Information gathered about a victim who is also a witness to a crime is protected from disclosure under a well-recognized exception to the general rule that the information recorded on the front side of an Incident/Offense Report is public information. No portion of the back side of the Report is a public record because it is considered the officers' work product. AGO 2000-0203.
- When a juvenile is both a witness to and the victim of a crime, he or she is entitled to the same confidentiality protections as an adult victim/witness. Because of their status as juveniles, additional information may be withheld. AGO 2000-0225.
- The records of the emergency management communications district are public records and should be made accessible to the public for inspection and copying except in those instances when specific records or portions thereof can be demonstrated by the district to fall within recognized exceptions to the Open Records Act. See, Sections 11-98-1 to 11-98-11 of the Alabama Code. AGO 2001-0086.
- Upon proper inquiry, a police department must release to a person in possession of a repaired automobile or towed automobile the most recent address in its files for the owner or lien holder of the automobile in order that notice might be given to the owner or lien holder of a proposed sale at public auction. AGO 2001-0071.
- Personnel files of former employees of a municipal board of education are public records, unless the board can prove that the records are sensitive and should not be disclosed. AGO 2001-0269.
- The federal law relating to the confidentiality of drug defendant records applies only to those alcohol and drug education/treatment providers that maintain such records for the purpose of treatment, diagnosis, and referral of patients and does not restrict a jailer from recording identifying information regarding the defendant or the defendant's arrest in a jail logbook, the contents of which is public information. AGO 2003-0048.
- Section 41-13-23 requires that public records should be kept in the office where the records were created or in a depository approved by the Local Government Records Commission. Before transferring public records to a different location, the Local Government Records Commission should be consulted. AGO 2003-0064.
- A mugshot in a computer database is a public record and must be provided to bail bonding companies under the Open Records Law unless it falls within a recognized exception. AGO 2004-0108.
- Records maintained by a separately incorporated utility board organized under Section 11-50-310 et seq., Code of Alabama 1975, are public records. *Water Works and Sewer Bd. of City of Talladega v. Consolidated Pub.,* 892 So.2d 859 (Ala. 2004). This case is significant because the Court held that, at least for purposes of the Open Records Laws, employees of separately incorporated utility boards are considered municipal employees. For more discussion of this case, see the article on boards, elsewhere in this publication.
- National Fire Incident Reporting System forms are public records except when specific records or portions thereof can be demonstrated by a municipal fire department to fall within a recognized exception. AGO 2006-0134.
- Judicial records have historically been considered public records. *Mobile Press Register, Inc. v. Lackey,* 938 So.2d 398 (Ala. 2006).
- Because a state agency may regulate the manner in which public records are produced, inspected and copied, a state agency, to be in compliance with §36-12-40 and §36-12-41, is not required to distribute public records in the manner that a requestor specifies. AGO 2007-0001.
- A Water, Sewer and Fire Protection District must follow the procedures of the Local Government Records Commission established pursuant to section 41-13-23 of the Code of Alabama, regarding the destruction of any of its records, including the length of time that the records must be kept. AGO 2007-0016.
- A letter or any other written, typed, or printed document received by a public official in pursuance of law is a public record. The final document generated in response to the taking of notes, if any, is a public record, but the notes themselves are not public records. AGO 2007-0031.
- Arrest information including the jailer's logbook is public record. A mugshot is a public record. Under section 41-9-625 of the Code of Alabama, a criminal justice agency is required to expunge identification information, including the booking photograph, on a defendant who is released without charge or is cleared of an offense and such disposition shall be reported by all state, county and municipal criminal justice agencies to ACJIC within 30 days of such action, and all such information shall be eliminated and removed. AGO 2007-0052.

- The criminal complaint supporting an unexecuted arrest warrant is not subject to disclosure under the Open Records Act. Once the warrant has been executed, the complaint supporting the same becomes public record. A custodian of public records may recoup reasonable costs incurred in providing documents to a citizen including, where necessary, costs for retrieving and preparing the records and the actual cost of copying the records. AGO 2008-0030.
- Time sheets of employees in the Revenue Commissioner's Office are public records. Certain sensitive information, however, that may be contained in those records is not public record. The custodian of records should redact sensitive personnel information. The custodian of records may recover the reasonable cost involved in providing the requested records to a citizen. The custodian of records may recover the reasonable cost involved in providing the requested records to a citizen. The custodian of records must make the records available for copy and inspection during the normal business hours, within a reasonable period of time that the request was made and may do so in such a manner as to prohibit work disruption. AGO 2008-0073.
- The regular copy fee may not be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record. The public official does not have the authority to refuse the use of personal cameras or other electronic devices for receiving copies or retrieving information from public records unless the camera or other electronic device unduly interferes with the operation of the government office. AGO 2009-0076.
- The Secretary of State's written order in a complaint file removing a registrar is subject to disclosure under the Open Records Law. The open complaint file, closed complaint file when no cause is found to proceed with removal, and internal recommendations as to how to proceed, but not constituting the final order, may be withheld from public inspection. AGO 2010-0050.
- The city council, city manager, or a person authorized by the council or manager, including an authorized individual council member, may only obtain the front side of an Alabama Uniform Incident/Offense Report, even after the case is closed, under section 45-8A-23.262 of the Code of Alabama. The city manager may obtain a full report from the city's police department, if necessary, as part of the normal supervisory functions of the manager's office. The manager should not make the back side of the report available for inspection. AGO 2012-0009.
- The supervision and maintenance of personnel files is the responsibility of the executive officer or superintendent of the Board of Education. The school board may establish policies governing the contents of personnel files. The mechanism for storing and disposing of personnel files is an administrative issue that would best be handled by policies and procedures implemented by the Board of Education. Retention practices should be consistent with the procedures established by the Local Government Records Commission. AGO 2012-0019.
- A municipality should, under the Public Records Act, allow members of the general public to inspect and obtain copies of completed Alabama Uniform Traffic Accident Reports. A municipality should redact a person's home address and telephone number from an accident report. A person's date of birth is public and may not be redacted from any Uniform Traffic Accident Report that the municipality produces. AGO 2012-0045.
- The federal Health Insurance Portability and Accountability Act (HIPAA) preempts a state law that requires nursing homes, upon request, to release the medical records of deceased residents to their spouses and attorneys-in-fact. *OPIS Management Resources, LLC v. Secretary, Florida Agency for Health Care Administration,* --- F.3d ----, 2013 WL 1405035 (11th Cir.2013).
- A state may limit access to its public records to residents of that state without running afoul of either the Privileges and Immunities Clause or the Dormant Commerce Clause. *McBurney v. Young*, 133 S.Ct. 1709 (U.S.2013).
- A public entity may charge a reasonable fee for extensive research required to comply with a public records' request. AGO 2013-040.
- Although email addresses of the citizens of a municipality are public records pursuant to section 36-12-40 of the Code of Alabama, they are exempt from disclosure. The municipal clerk, as the custodian of records for the municipality, is authorized to determine which public records are subject to disclosure, subject to limitations established by the governing body of the municipality. Each request for public records' disclosure must be considered on its own merits, with public policy generally favoring disclosure. The question of whether a disclosure would result in undue harm or embarrassment to an individual, or adversely affect the public interest, is a factual question. The party refusing disclosure has the burden of proving that the writings or records sought are within the exception. AGO 2013-0046.

- Training profiles, standard operating procedures, use-of-force policies, discharge-of-firearm policies, and reporting-of-incidents policies are public writings as contemplated by section 36-12-40 of the Code of Alabama. Although training profiles, standard operating procedures, use-of-force policies, discharge-of-firearm policies, and reporting-of-incidents policies are public writings, some information therein may be exempt from disclosure and redacted if the municipality determines that disclosure thereof could reasonably be expected to be detrimental to the public safety or welfare or otherwise be detrimental to the best interests of the public. AGO 2014-0068.
- A sub-list of the statewide voter registration list that is created by the Alabama Secretary of State, which has been modified by the Alabama Department of Public Safety, is a product of a commingling of information housed within two different agencies, and should not be considered a public record or writing that is subject to disclosure. AGO 2014-0087.
- A city board of education is required to disclose, by name, the compensation of employees under the Open Records Law. AGO 2015-0037.
- The Alabama Uniform Arrest Report is subject to disclosure under the Open Records Law, except when specific records or portions thereof can be demonstrated by the city police department to fall within a recognized exception. The home address, telephone number, social security number, driver's license number, occupation, employer, and business address and telephone number of the arrestee on the front side of the report may be withheld from public inspection. The full address of the location of arrest, if the same as the home address, on the front side of the report may be withheld. The block number or street name is public record. The "SID" and "FBI" numbers on the front side of the report should not be released. The "Juvenile" section and the name of a juvenile arrestee on the front side of the report should be withheld. No portion of the back side of the report is public record. If the release of information from any other sections of the form would compromise a pending criminal investigation, that information may be withheld. AGO 2015-0057.
- Letters from the Alabama Department of Human Resources in the district attorney's investigative file, referring complaints about mistreatment of students in church preschools to the district attorney for investigation, are not subject to disclosure under the Open Records Law. No portion of the letter is subject to disclosure. AGO 2016-019. The best interests of the state outweighed the presumption for disclosure of records regarding the functioning of a cell phone tracking device used by a city police department. Thus, the records were exempt from disclosure under the Arizona public records law. The city described the device as a "surveillance technology device" that could assist in abduction or kidnapping investigations. *Hodai v. City of Tucson,* 365 P.3d 959 (Ariz.App.Div.2 2016).
- The checking account numbers on checks are not subject to disclosure under the Open Records Law and should be redacted. AGO 2016-0049.
- A check made out to the town for the park is subject to disclosure under the Open Records Law, even if the donor intended an anonymous donation, except checking account numbers should be redacted. AGO 2017-0007.
- Draft documents, such as versions of proposed administrative rules and legislation, used internally by the Alabama Department of Revenue, are not subject to disclosure under the Open Records Law. Draft documents shared externally, as well as internal and external correspondence, such as emails, on possible actions to be taken by Revenue, are also not subject to disclosure. AGO 2017-0036.
- Records of constables are subject to the provisions of the Open Records Law. Generally, access to public records is limited to Alabama citizens. AGO 2018-0030.