

An Open Records Overhaul & County Plans for Moving Forward

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Governmental agencies and officials generate data, information, and documents related to public functions. Certain materials are required to be kept and others are simply created in the course of an organization's operations. Those records can be requested.

All states have some version of an Open Records Act sometimes called a Sunshine Law, which vary in length from a few paragraphs to around 20 pages. Our statute consists of two paragraphs and, as a result, the Attorney General and the Alabama Supreme Court have played significant roles in supplying details to the law.

The 2019 Bill & the 2020 Bill

- The 2019 Bill was remarkably unpopular. It was a total repeal of 6 sentences to be replaced by 40 pages. It would have effectively rendered several Supreme Court Opinions and more than 40 Attorney General's opinions obsolete.
- The 2020 Bill (that has been provided to the ACCA for review) reflects nine changes, but nearly all changes are less than significant.

Overview of the 2020 Bill

- Each Governmental Body must adopt and publish rules or procedures and must designate a “Custodian of Records” who has the authority to grant or deny a request.

Overview of the 2020 Bill

- The bill creates a “Public Access Counselor” in the Department of Public Examiners. This person will be a lawyer and will be tasked with issuing “advisory opinions” but is not bound to follow any opinion written by the Attorney General.

Overview of the 2020 Bill

- The Bill requires the creation of Administrative Procedures for denials of requests because denials are subject to Administrative Review or direct appeal to Circuit Courts.

Overview of the 2020 Bill

- And, the bill creates monetary penalties.
More on that later ...

4 Areas of Concern

9-1-1 Audio Tapes (*Section 11-98-12*)

- In 2010, the ACCA and the Association of 911 Districts worked with the Legislature to significantly limit public access to 911 audio tapes. Neither the 2019 nor the 2020 bill recognize the existence of § 11-98-12.

In the 2019 Bill the Custodian of Records had **5** days to respond. *There is still very little regard for potential for disruption of duties or essential functions*, but, in the 2020 bill, the custodian has up to **14** days to:

1. Calculate and communicate expenses for copies and
2. Provide the record; or
3. Deny the request in writing with a great deal of “responsive information”; or
4. Provide part and redact part; or
5. Respond in writing that he or she cannot respond within 14 days; or
6. Respond that the record does not exist;
7. Respond that he or she is not the custodian of the record AND identify the proper custodian.



The Monetary Penalties are an example of one significant change to the 2020 Bill. In 2019 Bill the custodian was responsible for payment of penalties. In the 2020 bill:

“A Governmental Body is authorized to pay for or provide for the legal expenses of the Custodian of the Records in a proceeding initiated under this chapter, and the Governmental Body is also authorized to pay for or reimburse any costs or fees owed to the Requestor under this chapter.”

The civil penalties under this section shall be:

- (1) Not less than seventy-five dollars (\$75) per day from the date the public record should have been provided to the requestor; but*
- (2) Not more than one thousand five hundred dollars (\$1500) for the first violation of this chapter without reasonable justification in the prior two-year period; or*
- (3) Not more than three thousand dollars (\$3000) for the second violation of this chapter without reasonable justification in the prior two-year period; or*
- (4) Not more than three thousand five hundred dollars (\$3500) for each additional violation of the chapter without reasonable justification in the prior two-year period.*

Unlike interpretations of the current law, the requestor would no longer need to be a citizen of Alabama, but the 2020 bill, unlike the 2019 bill, allows the Governmental Body to charge additional fees from a non- resident.



ACCA is invited to attend a meeting on Thursday, December 12, where interested players are providing input to the drafters.

Your input is valuable.

Input / Questions?

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