



Association County Commissioners of Georgia

2012 Rewrite Open Meetings and Open Records Acts (HB 397)

June 2012



Open Meetings



Open Meetings

What is a Meeting?

- Gathering of a quorum of the commissioners or a committee created by the commissioners
- Where public matter or business is discussed, presented or voted



Open Meetings

But not...

- Communications between more than two commissioners or committee members
- Emails between commissioners (but emails are open records)
- Incidental communications unrelated to county business
- Mediation proceedings



Open Meetings

Significant Deletion from previous law:

- Meeting = No longer defined as being “pursuant to schedule, call or notice from the governing authority ... at a designated time and place”



Open Meetings

Not a Meeting:

- Inspection of public property
- Attending seminars/training
- Meeting with state and federal legislators and officials in their offices
- Carpooling to an event
- Social, civic, religious events



Open Meetings

Not a Meeting...However:

- Cannot use one of the exceptions to avoid open meetings requirements
- No official action discussed or taken
- In some cases, no policy or public matter discussed or formulated



Open Meetings

- **All votes in public**
 - Exceptions...
- **All votes taken after proper notice**
 - Regular
 - Called
 - Special circumstances/Emergency



Open Meetings

- **Agendas, Summaries of Meetings, Minutes**

- Commissioner Meetings
- Committee Meetings

- **Minutes:**

- ID each member present
- Describe each motion or proposal made
- ID who makes motions and seconds
- ID each person voting for and against each proposal



Open Meetings

Executive Session

- Lawfully closed meeting
- Discuss an exempt topic
- OK to vote in executive session as specified in law
 - but not binding until later public vote.



Open Meetings

Executive Sessions

- Minutes must be prepared
- Not public
- Only for court inspection



Open Meetings

Executive Sessions

Acquisition, Sale or Lease of Real Estate:

- authorize negotiations
- agree to contract
- authorize option to purchase, sell or lease
- authorize appraisals



Open Meetings

Executive Sessions

Interviewing candidates:

- OK in executive session
 - Executive head of agency
 - Chief executive
 - Manager / Administrator
 - Department head



Open Meetings

Executive Sessions

Records exempt from disclosure

- OK to discuss in executive session



Open Meetings

Executive Sessions

Enforcing Compliance If Non-Exempt

Topic Breached:

- Chair must immediately rule out of order
- If non-exempt conversation continues, chair must adjourn
- Policy: All commissioners sign affidavit



Meeting via Teleconference

- **Active Military Duty**
- **Emergency Conditions**
 - All notice requirements met
 - Public has simultaneous access
- **Health Reasons or Out of County**
 - No more than twice a year (except with doctors note)
 - Quorum must be present in person



Open Meetings

Penalties

- Criminal misdemeanor
 - \$1000 first violation
 - \$2500 subsequent violations
- Alternative civil penalty
 - \$1000 first violation
 - \$2500 subsequent violations



Open Records



Open Records

Records Defined

- Expanded to include data and data fields



Open Records

Who is Entitled to Records?

Deletes language in previous law that limited access to “citizens of this state”



Open Records

Requests for Records

Records must be in existence at the time of the request



Open Records

Requests for Records

- Requests can be made orally or in writing
- The enforcement provisions of the open records only applies to requests in writing
- In writing includes email or fax



Open Records

For Requests County May:

- specify that written requests be made to the chair or other executive
- designate one or more records custodians
- Custodian = chair, clerk or other designated person



Open Records

Response Period

- Three days
- For written requests ... starts when made to the custodian



Open Records

Fees

- Administrative fee for search, retrieval at rate of lowest paid capable full-time employee
- Plus 10 cents/page (standard size)
- Plus actual costs for oversize
- Cost of redaction can be recovered



Open Records

Fees

- County authorized to enforce collection of fees if records not picked up
- If cost greater than \$25, search can be deferred until requestor agrees to pay
- If cost greater than \$500, prepayment may be required



Open Records

Fees...

- County may require prepayment for compliance with all future requests (regardless of size) until costs for prior production of records have been paid



Open Records

Requests for Electronic Records

- Requestor “should” provide enough information about the requested records to allow the custodian to locate the requested information

...Name, title, data bases to be searched



Open Records

Electronic Info/Website

- County must produce electronic records, or if requestor prefers, printouts of electronic records or data
- In lieu of copies, access may be provided through county website if available



Open Records

Reports, Summaries and Compilations not in Existence

- No requirement to prepare
(same as previous law)



Open Records

Civil Litigation

- No protection from discovery of records related to litigation
- County attorney must be notified and provided a duplicate set of documents.



Open Records

Attorney-Client Privilege

- Generally expanded to include all records containing communications subject to attorney-client privilege.



Open Records

Exemptions

Generally same as previous law, but cleaned up, clarified and duplications are eliminated.



Open Records

Private Information in Public Records

- Continues protection of social security numbers, bank account numbers, billing information
- Expands to include personal email addresses, unlisted phone and cell numbers



Open Records

Penalties Assessed Against:

- Criminal: Anyone who knowingly fails to provide records
- Civil: Anyone who negligently fails to provide records



Open Records

Penalties

- Criminal misdemeanor increased
\$1000 per violation
\$2500 successive violations within
12 months
- Alternative civil penalty
\$1000 first violation
\$2500 successive violations within
12 months



Open Meetings and Records

Summary

- Good and bad in HB 397
- Effective April 17, 2012
- Decisions Needed:
 - Procedure for approval of executive session minutes
 - Designation of records custodian
- OMOR Handbook Rewrite