



2012 Newly Elected Commissioners Conference

COUNTY LAW AND GOVERNMENT ETHICS

Keeping Your Government Transparent

Sam Olens

Attorney General, State of Georgia



2012 Newly Elected Commissioners Conference



ATTORNEY GENERAL SAM OLENS

ACCG 2012 Newly Elected County Commissioners
Conference

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www.law.ga.gov

ACCG
Association County Commissioners of Georgia

**CARL VINSON INSTITUTE
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HB 397 – Open Records & Open Meetings Laws

- **Read HB 397 and familiarize yourself with it.**
- **Your county attorney should have a deep knowledge of the law.**
- **Lean on your county attorney as a resource – time with your county attorney is time well spent.**

Open Meetings

- An “Agency” includes nearly all state and local government entities as well as non-profit organizations that receive more than 1/3 of their general funds from government. O.C.G.A. 50-14-1 (a)(1)(E).
- A “Meeting” includes the gathering of a quorum of an Agency or Agency Committee at which any official business, policy or public matter is presented or voted upon. O.C.G.A. 50-14-1 (a)(3)(A). Cf. Gumz v. Irvin. (Removes “designated time and place” requirement.)

Open Meetings

- The minutes must identify the person making and seconding the motion and include a record of all votes. O.C.G.A. 50-14-1(e)(2)(B).
- All votes must be taken in a public meeting. Cf. Johnson v. Bibb Co. O.C.G.A. 50-14-1(b)(1) (real estate).
- Exceptions only for preliminary votes to authorize settlement of litigation or votes on real estate transactions, which must still be finalized by public vote. O.C.G.A. 50-14-3(b)(1).

Open Meetings - Executive Session

- **Finalists for executive offices may be interviewed in executive session. O.C.G.A. 50-14-3(b)(2).**
- **Permits discussion only of exempt portions of records in executive session. O.C.G.A. 50-14-3(b)(4).**
- **Exemption includes mediations. O.C.G.A. 50-14-3(a)(5).**

Open Meetings – Executive Session

- **Minutes must be taken in executive session to allow for *in camera* review by a judge. O.C.G.A. § 50-14-1(e)(2)(C).**
 - The minutes must identify the specific issues discussed.
 - Must record when an attorney/client discussion occurred and identify subject matter, but substance of discussion does not need to be recorded in minutes.

Open Meetings

- **Increased fines for violations of Open Meetings. O.C.G.A. 50-14-6.**
 - Maximum fine of \$1000 (\$2500 for additional violations within 1 year).
- **Allows fines to be imposed in civil proceedings (negligence) in addition to criminal proceedings (knowing and willful).**
- **Expands from 90 days to 6 months the time to void an action taken in an illegal meeting. O.C.G.A. 50-14-1(b)(2).**

Open Records

- **A clear statement of legislative intent is provided for the first time.**
- **“A strong presumption that public records should be made available...without delay.” O.C.G.A. 50-18-70(a).**
- **References the State’s Records Management Act. O.C.G.A. 50-18-71(a).**

Open Records

- **Although requests may still be made orally, only written requests can form the basis of an enforcement action. O.C.G.A. 50-18-71(b)(1)(B) and 50-18-71(b)(3).**
- **Written requests can be sent via e-mail or fax. O.C.G.A. 50-18-71(b)(2).**
- **An Agency may designate an Open Records Officer to whom written requests must be made. O.C.G.A. 50-18-71(b)(1)(B), O.C.G.A. 50-18-71(b)(2).**

Open Records

- **An Agency may impose a reasonable charge for the search, retrieval & redaction of records. O.C.G.A. 50-18-71(c)(1).**
- **The Act reduces the cost per page from 25 cents to 10 cents for letter and legal sized pages.**
- **For other documents, the actual cost of reproduction may be charged. O.C.G.A. 50-18-71(c)(2).**

Open Records

- **Agencies must produce the requested documents within a reasonable period not to exceed 3 business days.**
- **When they cannot produce all of the requested documents within 3 days, they must notify the requester when the documents will be produced. O.C.G.A. 50-18-71(b)(1)(A).**
- **When an Agency withholds all or part of a requested record, specific legal authority to exempt the disclosure must be disclosed within 3 days. O.C.G.A. 50-18-71(d).**

Open Records

- **Agency must produce the records no later than three days after the request is made if the estimated cost is less than \$25;**
- **If the cost is between \$25 and \$500, the agency must notify the individual of the estimated cost;**
- **Agency may require pre-payment if the estimated cost exceeds \$500.**
- **If a prior request has not been paid, an Agency may require pre-payment for future requests.**
O.C.G.A. 50-18-71(d).

Open Records

- **Electronic records must be accessible to the public. O.C.G.A. 50-18-71(f).**
- **Provisions are made for production of records through websites. O.C.G.A. 50-18-71(h).**
- **Contracts with vendors cannot limit public access. O.C.G.A. 50-18-71(h).**

Open Records – Exemptions

- **The “pending investigation” exemption applies only to the Agency conducting the investigation, not to an Agency that is the target of an investigation. O.C.G.A. 50-18-72(a)(4).**
- **Improved public access to bids and proposals. O.C.G.A. 50-18-72(a)(10).**

Open Records – Exemptions

- **The following personal information can be redacted (O.C.G.A. 50-18-72(a)(20)).**
 - Social security number
 - Mother's birth name
 - Credit card information, debit card information, bank account information, account numbers, utility account numbers, and password used to access accounts
 - Financial data or information
 - Insurance or medical information in all records

Open Records – Exemptions

- **Personal information cont'd:**
 - Unlisted telephone number if so designated in a public record
 - Personal e-mail address
 - Cellular telephone number
 - Day and month of birth
 - Information regarding public utility, television, Internet, or telephone accounts held by private customers

Open Records - Exemptions

- **Narrows the exemption for trade secrets, permitting a third party to seek a court order prohibiting disclosure O.C.G.A. 50-18-72 (a)(34).**
- **Clarifies the scope of attorney-client privilege. (except factual findings in investigations). O.C.G.A. 50-18-72(a)(41).**

Open Records

- **Increased fines for violations of Open Records.**
 - Maximum fine of \$1000 (\$2500 for additional violations within 1 year).
- **Allows fines to be imposed in civil proceedings in addition to criminal proceedings. O.C.G.A. 50-18-74.**

Requests for Advice

- **We understand that difficult legal questions related to a state statute may arise at the county level.**
- **As a courtesy & if appropriate, the AG's Office will review the matter and provide our position.**
 - County attorney first must research, review and offer his/her opinion on the matter before AG review.
 - Not our role to play referee.
 - Once a matter is disclosed to the AG, it is not longer privileged and subject to ORA.



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FOR MORE INFORMATION ON THIS TOPIC:

ETHICS

MARCH 21, 2013

MARCH 22, 2013

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