OPEN MEETINGS AND OPEN RECORDS

This chapter contains general information for the use of the members of ACCG and the public. This information is not and should not be considered legal advice. Readers should consult with legal counsel before taking action based on the information contained in this chapter.

© 2022 Association County Commissioners of Georgia (ACCG). ACCG serves as the consensus building, training, and legislative organization for all 159 county governments in Georgia. For more information, visit: accg.org.

ACCG
Advancing Georgia's Counties.

INTRODUCTION

Providing public access to county meetings and records is a fundamental function of county government. Georgia law requires county governments to provide public access to all county meetings and records maintained by the county with few exceptions. Transparency in government allows the public to have greater insight into how county decisions and laws are made and encourages public participation at the local level.

This chapter provides a general overview of the Open Meetings and Open Records Laws, describes how these laws apply to county government, and explains the role and responsibilities of counties in implementing these laws. Topics include:

- County meetings.
- Meeting requirements.
- Executive session requirements.
- Public records.
- Records retention compliance.
- Processing open records requests.
- Exempt records.
- Penalties for non-compliance.

Executive sessions differ from other meetings in that they are closed to the public and have additional, crucial requirements and procedures. County government authority members should have a clear understanding of these requirements and procedures to avoid violating the law. Therefore, this chapter provides a detailed overview of executive sessions. For a full, in-depth analysis of all the topics listed above, see the ACCG Open Meeting and Open Records Guide.

Throughout the chapter, the term "county governing authority" will be used to represent boards of commissioners, sole commissioners, and consolidated governments and the term "other local government entities" will be used to represent all other local boards, commissions, and authorities.

OPEN MEETINGS LAW

The Open Meetings Law seeks to ensure that the governing process is transparent and provides ample opportunity for engagement. It provides clear guidance on how meetings of the county governing authority are to be made open and available to the public so as to avoid penalty and criminal violation. The law's many nuances and required timelines place significant responsibility on county governing authority members and staff.

Hundreds of hours are spent annually by commissioners and staff in crafting policies and procedures, developing the budget, preparing contracts, and making decisions about county government operations. However, it only takes a few minutes of failing to follow the requirements of the Open Meetings Law to invalidate those efforts. Imagine having worked on a land deal for 18 months only to have it invalidated because the county governing authority failed to take the vote authorizing the action in a public meeting. Or having a judge rule that a multi-million-dollar contract was not binding because it was voted on at a meeting not properly advertised to the public. From failing to make meeting summaries available to the public within the prescribed timeframe to improperly entering into an executive session, these seemingly administrative mistakes could seriously impact counties in terms of time, money, and opportunities. As such, it is important that members of the county governing authority, staff, and members of the public serving on a county committee clearly understand the requirements of the Open Meetings Law to avoid any unlawful action, whether intended or not.

The Open Meetings Law applies to both state and local governments, including their respective departments, agencies, boards, bureaus, offices, commissions, and authorities.[1] As it applies to counties, the law includes the county governing authority, as well as any committees created by the county governing authority.[2] Additionally, the Open Meetings Law applies to all local boards, authorities, commissions (e.g., boards of equalization, water and sewer authorities, civil service boards, etc.), and any respective committees they may create.[3]

County Meetings

Georgia law defines a meeting as a gathering of a quorum (i.e., minimum number of people required for any official business or action to take place) of a county governing authority, committee, or other local governmental entity, where official county business, policy, or public matters are discussed, presented, formulated, or voted upon.[4]

Meetings can take many forms — common types of county meetings include:

- Regularly scheduled meetings.
- Special called meetings.
- Emergency meetings.

- Agenda-setting meetings.
- Work sessions.
- Teleconference meetings.
- Public hearings.
- Executive sessions.
- Committee meetings.

However, not all gatherings are considered to be meetings. There are situations where a quorum of a county governing authority, committee, or other local governmental entity may be present, but no county business is being discussed nor is official action being taken. In those instances, if the primary purpose of the gathering is not to avoid or evade Open Meetings Law requirements, it is not considered to be a meeting.

Types of gatherings that **do not** constitute a meeting under the Open Meetings Law include:

- Statewide, multi-jurisdictional, or regional meetings, such as an Association County Commissioners of Georgia (ACCG) conference, regional training seminar, etc., so long as no county business is discussed by a quorum while attending the meeting.[5]
- Carpooling to and from an event or meeting so long as no county business is discussed.[6]
- Social, civil, ceremonial, or religious events (e.g., festivals, football games, Veteran's Day events, business openings, church services, etc.) so long as no county business is discussed.[7]
- Inspection of public facilities or properties (e.g., landfill, fire station, water treatment plant, etc., located within the county governing authority's jurisdiction) so long as no county business is discussed.[8]
- Meetings with state or federal officials held at state and federal offices.[9]

Additionally, certain types of gatherings are considered to be meetings, but are **not** subject to the Open Meetings Law due to their nature and purpose, including:

- Staff meetings for investigative purposes or intent.[10]
- Local law enforcement agency meetings.[11]
- Grand jury meetings.[12]
- Public hospital governing authority meetings.[13]

- Conversations that are incidental in nature and unrelated to county business (e.g., discussing the weather, outcome of a football game, holiday plans, etc.).[14]
- Email communications among members of the county governing authority — so long as they are not intended to circumvent Open Meetings Law requirements, such as polling members in advance for an upcoming vote.[15] While email communications are specifically exempted, other instantaneous forms of communication such as social media and text are not. However, all of these communications are subject to the Open Records Law, which is discussed later in this chapter.

Meeting Requirements

The Open Meetings Law has specific requirements for meetings beyond simply being open and available to the public. Notice requirements for specific types of meetings each have distinct timelines that must be followed in terms of advanced notice.

Additionally, meeting minutes must be kept and retained within specific guidelines for all public meetings. How and when those minutes must be made available to the public following a meeting is defined in state law. [16]

The table below provides a snapshot of the Open Meetings Law requirements related to meeting types and related notices, agendas, and minutes, as well as when each are to be made available to the public and/or media upon request. Violations for failing to follow these requirements may result in penalties and may be considered a criminal offense. [17] Civil litigation can also be brought against county governing authorities that fail to comply with the law. [18]

Required Meeting Timelines

Meeting Type	Notice Requirement	Agenda Distribution	Minutes
Regularly Scheduled (work sessions, agenda setting meetings, and committee meetings)	One week prior	Up to 2 weeks prior	Meeting summary available within 2 business days Official minutes must be made available once approved but no later than immediately following next regular meeting
Special Called	At least 24 hours prior (in legal organ if published more than 4X weekly, at meeting site if not)	At least 24 hours prior	Same as regularly scheduled meetings

Emergency	Can be less than 24 hours Must notify media Must provide notice as is reasonable under the circumstances	Items to be discussed should be sent to the media and posted as soon as possible	Same as regularly scheduled meetings
Teleconference	Depends on meeting type	Depends on meeting type	Depends on meeting type
Executive Session	Must publicly vote on closing of open meeting	Listed on open meeting agenda Based on type of meeting Follows timeframe for type of meeting	Minutes kept but remain confidential Must publicly release reason for executive session, names of county governing authority members present, and names of members who voted to close meeting
Hearings (numerous types of public hearings; many require specific notice not discussed in this chapter)	Depends on type of hearing	Depends on type of hearing	Depends on type of hearing

The following sections provide a basic overview of requirements for meeting notifications, agendas, summaries, and minutes. A more in-depth review of the Open Meetings Law can be found in the ACCG Open Meeting and Open Records Guide.

Notice Requirements

Public notice is required by law to be given before a meeting of the county governing authority, committee, or other local governmental entity is held unless the meeting is exempted. Notice requirements vary depending on the type of meeting. More information about the different types of meetings is available in the Meeting Procedures and Organization Chapter.

Regularly Scheduled Meetings

A regularly scheduled meeting is a meeting of the county governing authority, committee, or other local governmental entity that is routinely held at a fixed time and date to discuss, manage, and/or conduct county business. These may also include work sessions, agenda-setting meetings, and committee meetings.

Regardless of the type of regularly scheduled meeting, the county governing authority, committee, or other local governmental entity must set the time, place, and dates of

regular meetings and provide notice with the county legal organ (i.e., the newspaper that has been designated to publish legal and official notices).[19] A notice must also be posted in writing at the meeting site (i.e., where the meeting is required to be held) in a highly visible place at least one week prior to the meeting and on the county website, if one is available.[20]

Special Called Meeting

Special called meetings are generally held to discuss a specific issue. State law requires that notices be given at least 24 hours in advance of a special called meeting to the county legal organ or to a newspaper having a general county circulation equal or greater to the county legal organ. The notice of the called meeting may be given orally or in writing.

If the legal organ is published less than four times weekly within the county, written notice must be posted for at least 24 hours at the regular meeting place. [21] Additionally, a 24 hours' notice of the special called meeting and a copy of the meeting agenda must be given to any local broadcast and/or print media outlets located within the county that have previously requested written notice of meetings within the past year. [22]

Emergency Meeting

The Open Meetings Law recognizes that unique circumstances could arise that would require a meeting to be held within a short timeframe to conduct county business. As such, meetings can be called with less than 24 hours' notice due to special circumstances and emergency events, such as a manmade or natural disaster. [23]

In this case, notice of the called meeting and the issues that are expected to be discussed must be provided to any local broadcast or print media outlet within the county that has provided a written request to be notified of meetings within the previous calendar year.[24] Notice must be given by telephone, fax, or email. If the emergency meeting cannot be held at the regular meeting place because of disaster, the meeting can take place anywhere within or outside the county or state as needed.

Meetings Held by Teleconference

Under limited circumstances, meetings may be held by teleconference if needed. State law allows meetings to be held in this format if there is an emergency involving public safety or if public property or public services are thought to be at risk or during a declared federal, state or local emergency.[25] As with traditional or regularly scheduled government meetings, proper notice and simultaneous public access must still be provided and members of the county governing authority or committees participating by teleconference should be able to participate in the same manner as if they were physically present.[26] For example, during a declared state of emergency, the county governing authority may meet via a video streaming platform such as Zoom or Webex

which would allow meeting participants to ask questions, discuss agenda items, view presentations, etc. — as long as all requirements of the Open Meetings Law are observed and the public is provided simultaneous access.

Individual members of the county governing authority are allowed to participate by teleconference due to health reasons or other necessary absences from the county — as long as a quorum is physically present at the meeting location and all other requirements of the Open Meetings Law are met. No member of a county governing authority may participate by teleconference more than twice in one calendar year, unless proof of an emergency or a written note from a doctor or other health care official is provided indicating the member cannot attend due to health reasons.[27]

Additionally, county governing authorities may also hold official meetings via teleconference to accommodate one or more of their members on active military duty.[28]

Public Hearings

Public hearings may also be held by teleconference if there is a declared federal, state, or local emergency. All Open Meetings Law access, meeting, and notice requirements must be observed as if it were an in-person public hearing. Additionally, members of the public must be afforded the means to participate fully in the same manner as if they were physically present.[29]

Georgia law requires that county governing authorities hold public hearings before certain actions can be taken,[30] such as:

- Finalizing zoning decisions.[31]
- Adopting annual budgets.[32]
- Setting millage rates.[33]
- Adopting impact fees.[34]
- Implementing occupation taxes.[35]
- Abandoning a county road.[36]
- Developing an abandoned cemetery. [37]
- Creating a regional housing authority. [38]
- Entering into a contract for certain regional facilities (industrial parks, business parks, conference centers, convention centers, airports, athletic facilities, recreation facilities, jails or correctional facilities, or other similar or related economic development parks, centers).[39]
- Entering into a contract for the sale, lease, or management of a county-owned landfill or solid waste disposal facility.[40]

- Selecting the site for a publicly or privately owned solid waste disposal facility.[41]
- Entering into a multi-year lease contract for real property.[42]
- Designating property as historic property or creating a historic district.[43]
- Decreasing county police department budgets by more than five percent, unless certain circumstances are present.[44]
- Adopting ordinances that regulate personal delivery devices.[45]

Meeting Agendas

For all meetings of the county governing authority, agendas must be made available to the public and media upon request within two weeks prior to the meeting.[46] In addition, the agenda must be posted at the meeting site[47] and it is recommended that the agenda be posted on the county website, if possible.

According to state law, the agenda must include all the items that are expected to be discussed during the meeting.[48] However, failure to include an item on the agenda that needs to be addressed at the meeting does not prevent the county governing authority from considering or voting on that item.[49] In the event that an issue comes up after the agenda has been set that needs to be discussed at the meeting, county governing authority members need to vote to amend the agenda to include that item for discussion.

Meeting Summary and Minutes

After a meeting has concluded, county governing authorities have two business days to prepare a meeting summary and make it available to the public.[50] The summary provides a general overview of the meeting and must include the members present at the meetings and the subject matter of any issues for which action was taken.[51]

The meeting minutes are required to be open to public inspection once approved by the county governing authority, which should occur no later than immediately following its next regularly scheduled meeting. The following information must be included:

- Names of the members present at the meeting.
- Description of each motion or proposal.
- Identity of the persons making and seconding the motion or other proposals.
- Record of all votes.
- Names of each person voting for or against a proposal.[52]

Each person in attendance is presumed to have approved the proposal unless the minutes reflect the name of the person(s) voting against or abstaining.[53]

As discussed in the Abuse of Office, Conflicts of Interest, and Ethics Chapter, minutes are kept for each meeting of the county governing authority (including work sessions, agenda planning meetings, and committee meetings). The minutes serve as the official and permanent document of record of all county business conducted within a meeting, including the votes of individual members. [54] As such, extreme care should be observed in preparation of the minutes to ensure accuracy.

Minutes of Special Called Meetings

When county governing authorities must hold a special called meeting with less than 24 hours' notice, the nature of the provided notice and the reason for the emergency meeting are required to be included as part of the minutes. [55] If part of a special called meeting is held as an executive session, minutes must be taken for the closed portion and kept confidential.[56] However, the public meeting minutes must state that the session was closed and provide the reason for doing so. [57]

Executive Session Minutes

Minutes of executive sessions differ from that of other county governing authority meetings because these types of minutes are not subject to public review. However, the reason for the executive session, members of the county governing authority present, and the members who voted to close the meeting must be recorded and made available to the public.[58] Even though executive session minutes are not available to the public, minutes still have to be taken and should include each issue discussed.[59] Issues that are subject to attorney-client privilege discussed during the executive session need only to be noted as having occurred and include the subject matter of the discussion (e.g., "an attorney-client discussion occurred related to the acquisition of real estate"). Details of the discussion should not be identified in the minutes. Executive session minutes are required to be kept and preserved in case a dispute arises regarding how the executive session was entered into or conducted and needs to be examined by a court of law.[60]

Executive Session Requirements

An executive session is part of an open meeting that is lawfully closed to the public to discuss confidential matters, as defined by the Open Meeting Law.[61] Matters authorized to be discussed in executive session are considered confidential and deemed sensitive in nature. Legal ramifications may result if county governing authority members do not honor executive session confidentiality.

County governing authorities are permitted to go into executive session to discuss the following matters:

- Pending or potential litigation with the county's attorney.

- Settlements to lawsuits and claims involving the county.
- Confidential tax matters.
- Real estate decisions by the county.
- Certain personnel issues.
- Investment securities trading or investment portfolio positions and other composition matters as part of a public retirement system meeting.
- Exempt records.
- Cybersecurity services.

Litigation, Settlements, and Claims

County governing authorities can close a meeting to consult with the county attorney about pending or potential litigation, settlements, claims, administrative proceedings, or judicial actions brought against the county, its officers, or employees. [62] It is very important to note that (1) the county attorney must be present and (2) there must be a realistic and tangible threat[63] of potential litigation against the county to discuss it in executive session. Simply wanting to discuss the possibility of future litigation is not justification to go into executive session.

It is also permitted for county governing authorities to discuss or vote to authorize settlement of pending or potential litigation, settlement, claims, administrative proceedings, or other judicial action directly involving the county or its employees or officers.[64] Unlike the pending or potential litigation requirements described above, the county attorney is not required by law to be present when the county governing authority discusses or votes to authorize a settlement. However, it is highly recommended that the county attorney be present during these deliberations to offer legal guidance.

No vote in executive session to settle litigation, claims, or administrative proceedings is binding until a subsequent vote is taken by the county governing authority in an open meeting. [65] The parties involved and principal settlement terms must be disclosed as part of the motion before the public vote is taken.[66]

Confidential Tax Matters

Confidential tax matters may be discussed in executive session. A confidential tax matter may include income tax records received by the county board of tax assessors to determine qualification for a property tax exemption or information submitted to the county to calculate taxes owed such as occupational tax records.[67]

Real Estate Decisions by the County

County governing authorities are also permitted to discuss and vote on real estate matters in executive session. Real estate matters may include the discussion of or authorization for negotiations, appraisals, contracts, or options to purchase, dispose of, or lease property.

No vote in executive session to acquire, dispose of, or lease real estate is binding until a subsequent vote is taken in an open meeting by the county governing authority. Also, the identity of the property and terms of the real estate deal must be publicly disclosed before the vote.[68]

Personnel Issues

The Open Meetings Law allows county governing authorities to discuss or consider certain personnel issues during executive session. These include the appointment, employment, compensation, hiring, disciplinary action or dismissal, and periodic evaluation or rating of a public officer or employee. Although discussion on these matters can be held in executive session, any measure requiring official actions and votes regarding personnel must be taken in public. [69]

For example, in certain situations, a candidate for county manager or administrator may be interviewed in executive session or a raise discussed for the finance director. The top three candidates for county manager or administrator must be disclosed to the public before a final hiring decision is made in a public meeting.[70] A salary increase for the finance director would be included in the finance department section of the county budget; the county budget must be voted on in an open meeting.

The Open Meetings Law also specifies personnel matters that **cannot** be discussed or presented in a closed session, which include: [71]

- Evidence or arguments submitted in a hearing regarding personnel matters; however, the board may deliberate on a decision in executive session.
- Vote on disciplinary action or dismissal of a public officer or employee.
- Policies regarding employment or hiring practices of the county.
- Filling a vacancy in the membership of the county governing authority.

If county governing authority members are confused as to what type of personnel matters can be discussed in executive session, members should consult with the county attorney.

Meetings of the Board of Trustees or Investment Committee of Public Retirement Systems

County governing authorities may participate in or operate retirement programs for their county employees and elected officials. Meetings of the board of trustees or the

investment committee of any public retirement system (created by or subject to state law) are allowed to be held in executive session when the county governing authority is discussing investment securities trading or investment portfolio positions and other composition matters.[72]

Exempt Records

County governing authorities may meet in executive session if it is necessary to discuss confidential records (i.e., those records or portions of records exempt from the open records law) and there is no other reasonable way to discuss the record without disclosing confidential components.[73] For example, the county governing authority may need to review courthouse security plans with the sheriff. Due to the sensitive nature of this information and apparent need for confidentiality, this issue would need to be discussed in executive session.[74]

Cybersecurity Services

The Open Meetings Law allows county governing authorities to discuss cybersecurity plans, procedures, and contracts regarding cybersecurity services in executive session. However, no vote in executive session is binding until a subsequent vote is taken in an open meeting where the identity of the contractor and the terms of the agreement are publicly disclosed.[75]

Executive Session Procedures

The first step to starting an executive session is to formally close the open meeting. To close the meeting, the specific reason for closing the meeting must be stated and a majority vote of a quorum of the county governing authority present is needed.[76] Once proper closure of the open meeting has occurred, the executive session can begin.

The meeting is convened by the presiding officer, who is typically the chair of the county governing authority. The presiding officer is responsible for ensuring that the meeting stays on track and only covers topics specifically identified prior to entering into the executive session and authorized by the Open Meeting Law as suitable for discussion. If at any point during the meeting unauthorized topics are raised and continued to be discussed, the presiding officer should immediately adjourn the executive session.

At the conclusion of the executive session, the presiding officer is required to execute an affidavit identifying the reason for closing the meeting and that the meeting was limited to the topics allowed by law.[77] A sample affidavit is available in the ACCG Open Meeting and Open Records Guide. It is very important that the presiding officer accurately attest to the statements provided in the affidavit. Knowingly and willfully making a false statement is a felony;[78] details are provided in the next section.

Penalties for Noncompliance with the Open Meetings Law

Criminal and civil actions can be brought in superior court against a county governing authority, staff person, or elected official for failing to comply with the Open Meetings Law. [79] Claims may be brought by members of the public, firms, organizations, and the Attorney General, who can bring both civil and criminal claims to enforce the law. [80] Actions must be filed within 90 days of the date the alleged violation occurred, unless the violation involves a zoning decision in which case the timeframe is 30 days.[81]

Potential penalties for violations to the Open Meetings Law may include fines of up to $2500 per violation, attorneys' fees, and misdemeanor charges for any person who knowingly and willfully violated the law.[82] Presiding officers who knowingly and willfully make a false statement in an executive session affidavit are subject to felony charges, which carry a sentence of one-five years and a fine of up to $1000.[83] Further, official county actions that occurred as part of an Open Meetings Law violation could be invalidated.[84]

OPEN RECORDS LAW

Transparency in government is not limited to public meetings. Georgia's Open Records Law requires that records generated or kept by county governing authorities are subject to disclosure unless specifically exempted by law or required to be kept confidential by court order.[85] Similar to the Open Meetings Law, the Open Records Law not only allows for disclosure of most county records, but it also prescribes the timeframe and format for requesting and releasing records, how records may be accessed, and the fees that can be charged to provide records.[86]

However, the Open Records Law does not apply to any records requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney as part of an ongoing administrative, criminal, or tax investigation. The open records officer or records custodian must provide copies of these records to the requesting agency unless the records are privileged or disclosure to these agencies is specifically restricted by law.[87]

The same agencies that are subject to the Open Meetings Law are also subject to the Open Records Law, which includes county governing authorities. Additionally, any association, corporation, or similar organization made up of and receives a minimum of 33 1/3 percent of its operating budget from local governing authorities (e.g., school boards, county commissions, city councils, county constitutional officers) is also subject to the requirements of the Open Records Law. Examples of those organizations at the state level include ACCG, Georgia Municipal Association (GMA), the Georgia Sheriff's Association, and the Georgia School Boards Association (GSBA).[88]

Public Records

The Open Records Law defines public records as any document, paper, letter, map, book, tape, photograph, computer-based or generated information, data, data field, or similar material prepared and maintained or received by the county, other agency, or private person in performance of a service or function for (or on behalf of) the county or other agency. [89] This also applies to organizations, consultants or other firms, such as an auditing or architectural firm, performing such a service or function.[90]

Public records by law also include any documents that have been transferred to a private person or entity by the county, or other agency, for storage or future governmental use.[91] An example of this type of transaction would be maintaining county documents at a records facility management center.

Records Retention Compliance

Ensuring that county records are kept and stored properly is an important part of complying with the Open Records Law. State law requires that county records be kept in

accordance with the records management plan adopted by the county governing authority.[92]

The records management plan must include the following elements:

- A current and accurate records retention schedule.
- Named records officer/custodian.
- Specific guidelines for the maintenance and security of all county records.

Counties that do not have an adopted records retention schedule are required to comply with the schedule established by the State Records Committee (i.e., the local government retention schedule).[93] This schedule is posted online and is maintained and periodically updated by the Georgia Archives. Local records are categorized by Georgia Archives as either being "common" or "specific." Common records refer to records which could be created by any governing agency, such as budgets and accounting records. Specific records are records created for a specific government and no other.

Generally, records are kept for a short term, long-term, or permanent basis. Correspondence (i.e., emails, letters, other communications, etc.) is retained based on the subject matter and significance of the communication. How long a record must be kept depends on the record retention schedule adopted by the county governing authority. While schedules can be adopted that keep records longer than the minimum timeframe required by state and federal law, records cannot be kept for less time if there is a minimum requirement provided. In fact, the law prohibits records from being destroyed unless it is done in accordance with an adopted record retention schedule. Failure to follow this requirement may result in a misdemeanor.[94]

Although destroying records prior to the minimum legal timeframe is not advisable, keeping records beyond that timeframe can also be problematic. Retaining records beyond the recommended deadline may not only lead to records storage cost and space issues, but could possibly subject the county to liability by keeping records that should have been destroyed.

ACCG recommends that the county attorney reviews and assists in the creation or amendment of any county governing authority records retention schedule. It is also recommended that all county staff charged with maintaining county records periodically review the types of records retained with the county attorney and any appropriate department heads to ensure proper categorization and retention. It is further recommended that staff receive regular training on proper record retention to ensure record retention policies are being followed. The ACCG Open Meeting and Open Records Guide provides sample record retention procedures and policies, forms, and

suggested best practices that may be useful in updating or creating a records retention policy or schedule for a county governing authority.

Open Records Officer and Records Custodian/Officer

County governing authorities are required by law to designate a records officer — commonly referred to as the records custodian — to maintain records and oversee record retention.[95] This person, who is generally the county clerk, may be different from the open records officer who is named by the county governing authority to oversee open records requests. While naming an open records officer is a voluntarily action that may be adopted by a county governing authority, naming a records custodian to maintain county records is a mandatory requirement.

The records custodian is charged with maintaining public records in the possession of the county and ensuring that the county governing authority adheres to its records retention schedule. The records custodian must be designated to serve in this role by resolution or ordinance.[96]

While not required, one or more open records officers may be designated by the county governing authority to respond to open records requests. This position must be filled by the chair, chief executive officer, department head, clerk, or other designated employee of the county governing authority.[97] The county governing authority must not only determine who will fill this position, but also which departments and offices they will serve. Open records officers must be designated in writing. and notice of this designation must be provided to the legal organ of the county and posted on the county governing authority website, if one is available. [98]

Processing Open Records Requests

County records may be requested by members of the public, the media, businesses, organizations, universities, and even other governments. Failure to act in a timely manner, provide the correct records, or redact certain parts of a record could subject the county, elected officials, and staff to liability, penalties, and criminal charges. Therefore, commissioners have a vested interest in understanding of the requirements of the Open Records Law. While state law has specific requirements that must be met, the county governing authority has some flexibility on how record requests are received and who should respond to a request (discussed below).

Generally, state law allows open record requests to be made orally or in writing and the county has three days to respond to the requester. This process may seem simple, however, there are many questions and considerations that must be answered before moving forward:

- Has the county governing authority designated an open records officer?
- Does the county have the record in question?

- Is the record disclosable in whole or in part?
- Does the county attorney need to review the request?
- How long will it take to assemble the records?
- What is the cost to provide the records?
- Can the records be provided in the format requested?

Answering these questions will help to determine how the county governing authority responds to the request. Adoption of a formal process is recommended that provides mandatory steps in responding to record requests to ensure compliance with the Open Records Law. Best practices and suggested forms to use in handling open records requests are provided in the ACCG Open Meeting and Open Records Guide.

The county has three business days after receiving a request to either provide the requested records or provide notification that the records can be disclosed or are exempt.[99] While the law allows for open records requests to be made orally or in writing, county governing authorities may designate an open records officer(s) to receive written requests.[100] If the county has designated an open records officer, the three-day period begins when that person, or designated alternate, receives the request.[101] If the county has not designated an open records officer, the three-day period begins when the county receives the request.[102]

Some requests may be easy to compile, such as copies of the county budget or the latest available meeting minutes of the county governing authority. Records that are readily available must be provided within the three-day period.[103] However, records may not be readily available due to the volume, location, or complexity of the request. For example, it could take significant time to compile and review records for a request for all email communications between the county manager and chair for the past two years or for documents stored offsite. If the records are required to be disclosed but are not readily available, a description of the requested documents, an expected timeframe for their release, and the cost of the county records if it exceeds $25.00[104] must be given to the requester by the county governing authority within three days of receiving the request.[105]

County records exist in different mediums and the public is entitled to request and receive a record in a certain format if it is available.[106] This means that if the county governing authority stores data in an Excel spreadsheet and that format is requested, the county cannot instead provide a PDF of the same information. If the requester wants the records to be provided on electronic media such as a jump drive, it must be provided in that format, although the county can charge for the cost of the media used.[107] Additionally, although county governing authorities are not required by law to create reports that are not in existence to satisfy a records request, data does have to be

provided if it is available by running a range, searching a filter query, or using a similar command.[108]

Record Request Fees and Administrative Charges

Open records officers and records custodians are often responsible for communicating the associated fees and any administrative charges related to open records requests. The law instructs county governing authorities to use the most economical means available to provide copies of public records.[109] As such, the charge for search, retrieval, or redaction of records must not exceed the prorated hourly salary of the lowest-paid, full-time employee who is determined to have the necessary skill and training to perform the request. [110] While the law allows the county governing authority to recoup the cost of staff time to fulfill the request, no charge may be made for the first 15 minutes. [111]

Reasonable charges for the production or copying of records are also permitted to recoup any costs to the county. The following are requirements or recommendations in terms of charges and fees:

- County governing authorities can charge a fee of up to 10¢ per page for copying records or data on letter and legal sized pages. [112]
- The actual cost of producing the copy may be charged for other documents and for media used to produce electronic records, such as a jump drive.
- Uniform rates should be established countywide for other documents and media so that records officers and custodians in different departments do not charge different rates for copying or producing documents of a size not specifically designated in law.
- In some cases, higher fees may be permitted for copying or producing certain types of records if specified in law. For example, fees for geographic information system (GIS) records may cover the cost of developing and maintaining the records, but may not provide a profit.[113]

If the county governing authority intends to seek reimbursement for the costs of search, retrieval, and copying of requested records, certain requirements must be followed. If the charge is greater than $25, the law requires an estimate of the charge (preferably in writing) to be presented to the requester before completing the request. [114] If the charge is over $500, the county governing authority can require the person requesting records to pay in advance of receiving the records.[115]

Exempt Records

Most county records are subject to public disclosure under the Open Records Law. However, there are certain types of records, or parts of records, that are considered exempt from disclosure and must be either withheld, redacted, or removed by law.

Exempt records fall into one of three categories:

1. The record must be kept confidential because disclosure is prohibited by law or court order.
2. Disclosure of the record is discretionary, meaning the county governing authority can choose to release or withhold.
3. The record is temporarily restricted, but must be available for disclosure at a later time.

The following section provides an overview of the different types of records that fall into each of these three categories. A more thorough description and review of these records can be found in the ACCG Open Meetings and Open Records Guide.

Records Where Confidentiality is Required

If disclosure of a record is prohibited by law or court order, the county governing authority is not allowed to release the record. Releasing a confidential record could subject the county governing authority, staff, and elected officials to penalties.

The following types of records cannot be released:

- Records prohibited by court order from being released.[116]
- Records required to be kept confidential by the federal government.[117]
- Medical records and similar files considered to be an invasion of personal privacy.[118]
- Personal information in public records such as credit card and banking information, social security numbers, etc.[119]
- Personal information about public employees and officials (e.g., home address and phone numbers, social security and bank account numbers, etc.).[120]
- Electronic signatures.[121]
- Identifying information for children 12 or younger participating in public recreation programs.[122]
- Portions of records containing trade secrets.[123]
- Portions of records containing proprietary information (e.g., data, records, studies, or research that have not been publicly released or authenticated).[124]

- Confidential tax matters as defined by state and federal law.[125]
- Computer programs and software.[126]
- Original trial exhibits.[127]
- Vital records (e.g., birth, divorce, marriage death certificates, annulments, etc.).[128]
- Cable and video service provider financial information.[129]
- Confidential employee evaluations.[130]
- Records that could compromise security against sabotage, criminal, or terrorist acts.[131]
- Reports and records related to cyber attacks.[132]

Records Where Disclosure is Discretionary

The records below may be kept confidential, but confidentiality is not required by law:

- Records where public access is not required by law.[133]
- Public records identifying confidential sources or investigative materials.[134]
- Accident reports.[135]
- Records disclosing the location of certain historic properties.[136]
- Records disclosing the location of rare plants and animals.[137]
- Personal identifying information received by a county in connection with burglar, fire, or other electronic security systems[138] or a neighborhood watch or public safety notification program.[139]
- Records containing information about rideshare participants.[140]
- Records that could compromise public security against sabotage or criminal or terrorist acts.[141]
- Certain written records and electronic recordings of 9-1-1 calls.[142]
- Certain audio and video recordings used by law enforcement.[143]
- Applications for licenses to possess firearms.[144]
- Records subject to attorney-client privilege.[145]
- Attorney work product records.[146]
- Records related to county liability and self-insurance policies.[147]

Records Where Restriction is Temporary

The Open Records Law requires certain records to be restricted on a temporary basis. These records are generally required to be kept confidential during an investigation or pending transaction, until a future action occurs, or as requested by a donor or owner. A description of each type of record is provided below, including the timeframe for when records are required to be released to the public.

Temporary Record Restrictions

Record Description	Record Must Be Released
Law enforcement records in a pending investigation or prosecution of criminal or unlawful activity[148] (Applies to investigations of law enforcement, prosecution, or regulatory agencies)	Once direct litigation is final or otherwise terminated Initial police arrest and incident reports must be released Does not apply to records in the possession of the county governing authority that are the subject of a pending investigation or prosecution
Personnel Investigations[149] (Applies to materials obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees)	10 days after being presented to the county governing authority or officer for further action, or if the investigation is otherwise resolved, concluded, or terminated
Pending Bids and Proposals[150] (Applies to pending, rejected, or deferred sealed bids/proposals and any related detailed cost estimates)	Once the final award of the contract is made, project is terminated or abandoned, or public vote is taken regarding the sealed bid or proposal
Future or Potential County Real Estate Purchases[151] (Applies to real estate appraisals, engineering, feasibility estimates, or other records made for or by the county for the acquisition of real property)	Property has been acquired, or proposed transaction has been terminated or abandoned
Historic Research Records[152] (Applies to records having historical research value that are given or sold to public archival institutions or libraries)	May be restricted by the owner or donor up to 75 years for most records
Applicants for county manager/administrator/ executive head[153]	At least 14 calendar days prior to the meeting where the final action will be taken on the position

Penalties for Noncompliance with the Open Records Law

Civil and criminal actions can be brought against the county governing authority, its elected officials, and county staff for violating the Open Records Law. As discussed in the Abuse of Office, Conflicts of Interest, and Ethics Chapter, fines up to $2,500 per violation, court costs, and attorneys' fees may be assessed against those found to be in violation of the law, as well as the possibility of criminal misdemeanor and felony charges.[154]

Actions may be brought by a person, firm, corporation, or other entity in superior court.[155] The Attorney General also has the authority to bring actions to enforce compliance with the Open Records Law and, as such, can seek either civil or criminal penalties, or both.[156]

Claims and charges against county officials and staff may be brought for the following reasons:

- Expressly refusing to respond to a request.
- Failing to respond within the three-day time period.
- Releasing records that were prohibited from being released.
- Destroying records to prevent their disclosure.
- Intentionally making records difficult to obtain.
- For other records violations, as provided for in law.[157]

County officials and staff who provide access to information in good faith reliance on the requirements of the Open Records Law will not be held liable or in violation.[158]

Misdemeanor and felony charges can be brought against county employees and officials in violation of the Open Records Law.[159] For example, it is a misdemeanor for a records officer, county official, or any other person who violates the requirements of the Open Records Law by knowingly and willfully failing or refusing to provide access to records not subject to an exemption within the time limit established by law — or for intentionally frustrating or attempting to frustrate access to records.[160] Additionally, destruction of records for the purpose of preventing their disclosure is a felony punishable by a sentence of two to ten years.[161] 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.[162]

CONCLUSION

State law strongly supports transparency in government, as evidenced by the requirements set forth in the Open Meetings and Open Records Laws. County governing

authority officials and staff should make every effort to fully comply with these laws and consult their county attorney for specific guidance as needed.

Further information regarding the Open Meetings Law and the Open Records Law is available in the ACCG Open Meeting and Open Records Guide.

[1] O.C.G.A. § 50-14-1(a)(1).
[2] O.C.G.A. § 50-14-1(a)(1)(B) and (C).
[3] O.C.G.A. § 50-14-1 (a)(1)(C) and (D).
[4] O.C.G.A. § 50-14-1(a)(3)(A).
[5] O.C.G.A. § 50-14-1(a)(3)(B)(ii).
[6] O.C.G.A. § 50-14-1(a)(3)(B)(iv).
[7] O.C.G.A. § 50-14-1(a)(3)(B)(v).
[8] O.C.G.A. § 50-14-1(a)(3)(B)(i). Members of county governing authorities can have discussions about public facilities as part of county business, but may not take official action or discuss topics unrelated to the public facility.
[9] O.C.G.A. § 50-14-1(a)(3)(B)(iii).
[10] O.C.G.A. § 50-14-3(a)(1).
[11] O.C.G.A. § 50-14-3(a)(3).
[12] Id.
[13] O.C.G.A. §§ 50-14-3(a)(6) and 31-7-15(d).
[14] O.C.G.A. § 50-14-3(a)(7).
[15] O.C.G.A. § 50-14-3(a)(8); see generally § 50-18-72(a). While there is no open meeting requirement, email communications between commissioners are subject to the open records law.
[16] O.C.G.A. § 50-14-1 (e)(2).
[17] O.C.G.A. § 50-14-6.
[18] Id.
[19] O.C.G.A. § 9-13-142.
[20] O.C.G.A. § 50-14-1(d)(1).
[21] O.C.G.A. § 50-14-1(d)(2).
[22] Id.
[23] O.C.G.A. § 50-14-1(d)(3). O.C.G.A. § 38-3-54
[24]. O.C.G.A. § 50-14-1(d)(3).
[25] O.C.G.A. § 50-14-1 (g)(1) and (2).
[26] O.C.G.A. § 50-14-1(g).
[27] O.C.G.A. § 50-14-1(g) (3)
[28] O.C.G.A. § 38-2-279(g).
[29] O.C.G.A. § 50-14-1 (g)(2).
[30] These examples of public hearing requirements for county governing authorities are not an exhaustive list of all public hearing requirements.
[31] O.C.G.A. §§ 36-66-4(a) and 36-66-5; *Tilley Properties, Inc. v. Bartow County*, 261 Ga. 153, 154 (1991); *Hoechstetter v. Pickens County*, 303 Ga. 786 (2018).
[32] O.C.G.A. § 36-81-5(e) through (h).
[33] O.C.G.A. § 48-5-32.1(c).

[34] O.C.G.A. § 36-71-6.
[35] O.C.G.A. §§ 48-13-6(c) and 48-13-28.
[36] O.C.G.A. § 32-7-2(b).
[37] O.C.G.A. § 36-72-7.
[38] O.C.G.A. §§ 8-3-118; 8-3-100 through 104. A public hearing must be held before a county governing authority can adopt a resolution declaring a need for a regional housing authority.
[39] O.C.G.A. § 36-73-2.
[40] O.C.G.A. § 12-8-24.2.
[41] O.C.G.A. § 12-8-26.
[42] O.C.G.A. § 36-60-13(g).
[43] O.C.G.A. § 44-10-26(b)(2).
[44] O.C.G.A. § 36-8-8(c)(3). This code section only applies to county police departments with 25 or more full-time or part-time employees.
[45] O.C.G.A. § 40-6-329.1(d).
[46] O.C.G.A. § 50-14-1(e)(1).
[47] Id.
[48] Id.
[49] Id.
[50] O.C.G.A. § 50-14-1(e)(2)(A).
[51] Id.
[52] O.C.G.A. § 50-14-1(e)(2)(B).
[53] Id.
[54] Id.
[55] O.C.G.A. § 50-14-1(d)(3).
[56] O.C.G.A. §§ 50-14-1(e)(2)(C) and 50-14-1(e)(2).
[57] O.C.G.A. § 50-14-4(a).
[58] Id.
[59] Id.
[60] O.C.G.A. § 50-14-1(e)(2)(C).
[61] O.C.G.A. § 50-14-1(a)(2).
[62] O.C.G.A. § 50-14-2(1).
[63] *Claxton v. Evans County Bd. of Commissioners*, 249 Ga. App. 870 (2001).
[64] O.C.G.A. § 50 -14-3(b(1)(A).
[65] O.C.G.A. § 50 -14-3(b(1).
[66] Id.
[67] O.C.G.A. §§ 50-14-2(2); 48-5-314;48-13-15.
[68]O.C.G.A. § § 50-14-3(b)(1);50-18-72(a)(9).
[69] O.C.G.A. § 50-14-3(b)(2).
[70] The requirement that the names of the top three contenders for the position of county manager or administrator be released 14 days prior to the final action by the county governing authority is a requirement of the Open Records Law and not the Open Meetings Law. O.C.G.A. § 50-18-72(a)(11).
[71] O.C.G.A. § 50-14-3(b)(2).
[72] O.C.G.A. § 50-14-3(b)(3).
[73] O.C.G.A. § 50-14-3(b)(4).
[74] O.C.G.A. § 50-18-72(a)(25).
[75] O.C.G.A. §§ 50-14-2(b)(5); 50-18-72(a)(25)(v).
[76] O.C.G.A. § 50-14-4.
[77] O.C.G.A. § 50-14-4(b)(1).

[78] O.C.G.A. § 16-10-71(b).
[79] O.C.G.A. §§ 50-14-1(b)(2); 50-14-6.
[80] O.C.G.A. § 50-14-5.*Williams v. DeKalb County*, 308 Ga.265 (2020) (private person has standing to request civil penalties be imposed).
[81] O.C.G.A. § 50-14-1(b)(2) and (3).
[82] O.C.G.A. § 50-14-6; *Gravitt v. Olens*, 333 Ga. App. 484, 491-94 (2015) ("Person" as defined in this code section applies only to natural persons). It is a defense to any criminal action under the Open Meetings Law that a person acted in good faith in his or her actions.
[83] O.C.G.A. §16-10-71(b).
[84] O.C.G.A. § 50-14-1(b)(2).
[85] O.C.G.A. § 50-18-72.
[86] See O.C.G.A. § 50-18-70(a).
[87] O.C.G.A. § 50-18-77.
[88] O.C.G.A. § 50-18-70(b)(1).
[89] O.C.G.A. § 50-18-70(b)(2).
[90] Id.
[91] Id.
[92] See O.C.G.A. § 50-18- 99(c) and (d).
[93] O.C.G.A. § 50-18-99(d).
[94] O.C.G.A. § 50-18-102.
[95] O.C.G.A. § 50-18-99(e)(1).
[96] O.C.G.A. § 50-18-99(e).
[97] O.C.G.A. § 50-18-71(b)(1)(B).
[98] O.C.G.A. § 50-18-71(b)(2).
[99] O.C.G.A. § 50-18-71(b)(1)(A).
[100] O.C.G.A. § 50-18-71(b)(1)(B).
[101] O.C.G.A. § 50-18-71(b)(2).
[102] O.C.G.A. § 50-18-71(b)(1)(A).
[103] Id.
[104] O.C.G.A. § 50-18-71(d).
[105] O.C.G.A. §§ 50-18-71(b)(1)(A); 50-18-71(d).
[106] O.C.G.A. § 50-18-71(f).
[107] O.C.G.A. § 50-18-71(c)(2).
[108] O.C.G.A. § 50-18-71(f).
[109] O.C.G.A. § 50-18-71(c)(1).
[110] Id.
[111] Id.
[112] O.C.G.A. § 50-18-71(c)(2).
[113] O.C.G.A. §§ 50-18-71(c)(2) and 50-29-2.
[114] O.C.G.A. § 50-18-71(d).
[115] Id.
[116] O.C.G.A. § 50-18-71(a).
[117] O.C.G.A. § 50-18-72(a)(1).
[118] O.C.G.A. §§ 50-18-72(a)(2), (a)(20)(A), (a)(21), (a)(39).
[119] O.C.G.A. § 50-18-72(a)(20).
[120] O.C.G.A. §§ 50-18-72(a)(2), (a)(20)(A), and (a)(21).
[121] O.C.G.A. §§ 10-12-2(8) and 50-18-72(a)(23).
[122] O.C.G.A. § 50-18-72(a)(27).

[123] O.C.G.A. § 10-1-761(4) (defining trade secret); O.C.G.A. § 50-18-72(a)(34).
[124] O.C.G.A. § 50-18-72(a)(35).
[125] O.C.G.A. § 50-18-72(a)(43).
[126] O.C.G.A. § 50-18-72(a)(44).
[127] O.C.G.A. § 50-18-72(c) and (d).
[128] O.C.G.A. §§ 50-18-76, 31-10-25(f) and 31-10-1(18).
[129] O.C.G.A. § 36-76-6(d).
[130] O.C.G.A. § 50-18-72(a)(7).
[131] O.C.G.A. § 50-18-72(a)(25).
[132] O.C.G.A. § 38-3-22.2(d).
[133] O.C.G.A. § 50-18-71(a).
[134] O.C.G.A. § 50-18-72(a)(3).
[135] O.C.G.A. § 50-18-72(a)(5).
[136] O.C.G.A. §§ 50-18-72(a)(14); 12-3-50.1 to 12-3-50.2.
[137] O.C.G.A. § 50-18-72(a)(18).
[138] O.C.G.A. § 50-18-72(a)(19).
[139] Id.
[140] O.C.G.A. § 50-18-72(a)(24).
[141] O.C.G.A. § 50-18-72(a)(25).
[142] O.C.G.A. §§ 50-18-72(a)(26) and 50-18-72(a) (26.1).
[143] O.C.G.A. §§ 50-18-72(a) (26.2); 50-18-96.
[144] O.C.G.A. § 50-18-72(a)(40).
[145] O.C.G.A. § 50-18-72(a)(41).
[146] O.C.G.A. § 50-18-72(a)(42).
[147] O.C.G.A. § 50-18-72(a)(45).
[148] O.C.G.A. § 50-18-72(a)(4).
[149] O.C.G.A. § 50-18-72(a)(8).
[150] O.C.G.A. § 50-18-72(a)(10).
[151] O.C.G.A. § 50-18-72(a)(9).
[152] O.C.G.A. § 50-18-72(a)(13).
[153] O.C.G.A. § 50-18-72(a)(11). Applies to all documents concerning the three best-qualified applicants under consideration.
[154] See O.C.G.A. §§ 45-11-1(a) and 50-18-74(a).
[155] O. C.G.A.§ 50-18-73. *Cardinale v. Keane*, 362 Ga. App. 644 (2022) (private plaintiffs can seek civil penalties).
[156] Id.
[157] O.C.G.A. § 50-18-74(a).
[158] O.C.G.A. § 50-18-73 (c).
[159] O.C.G.A. §§ 45-11-1(a) and 50-18-74(a).
[160] O.C.G.A. §§ 45-11-1(a) and 50-18-74(a).
[161] O.C.G.A. § 45-11-1.
[162] O.C.G.A. § 50-18-74(a).