

Georgia Law Enforcement and the Open Records Act



A Law Enforcement Officer's Guide to Open Records in Georgia

Georgia Association of Chiefs of Police
Georgia Bureau of Investigation
Georgia Department of Law
Georgia First Amendment Foundation
Georgia Press Association
Georgia Public Safety Training Center
Georgia Sheriffs' Association
Georgia Department of Public Safety
Prosecuting Attorneys' Council of Georgia

This booklet was prepared by Gary Theisen of the Georgia Bureau of Investigation, Hollie Manheimer of the Georgia First Amendment Foundation, and was approved by the following groups, each of which has reviewed the subject matter and content. All of these groups encourage law enforcement community members to acquaint themselves with the Georgia Open Records Act, and to use this booklet for guidance.

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Georgia Law Enforcement And The Open Records Act

Georgia’s “sunshine laws” are critical to our citizens’ ability to observe the workings of their government. This edition of “the Blue Book” reflects the important changes made to the open government laws as a result of a collaborative effort undertaken by my office, key legislators and representatives of various interested groups, including the media. The new law, the first significant re-write of the Sunshine Laws in over a decade, first became effective on April 17, 2012.

The purpose of this guidebook is to provide a brief, general and non-technical discussion of Georgia’s Open Records Act, so that all members of Georgia’s law enforcement community can better understand how this law works and how it protects the rights of our citizens to be well informed about their government.

This guidebook provides specific reference topics concerning many of the issues in open records compliance that law enforcement personnel encounter on a regular basis. It also provides ready reference materials in its appendices. Reference is made to these helpful appendices throughout the guidebook. While we have tried to provide you with a comprehensive yet user-friendly resource on open records, no such effort can ever be a substitute for a well-reasoned policy on such an important topic, or for the advice of your legal advisor.

The Office of the Attorney General has an important role to play regarding all of Georgia’s “sunshine laws,” including those regarding access to public records. As members of the law enforcement community, we must be ever vigilant to ensure that the public we are sworn to protect and to serve is also protected in its rights to know what its government is doing. Moreover, it is often the case that law enforcement personnel are the most visible part of “government” that people encounter on a regular basis. It is critical, then, that you be as well informed as possible regarding the laws governing the access of the public to the information that government has.

I hope that this guidebook will help you in your efforts to better serve our citizens and our communities.

*Sam Olens
Attorney General
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I. Overview Of Georgia's Open Records Act

A. Purpose of the Open Records Act

The purpose of the Open Records Act is both to encourage public access to information and to foster confidence in government through openness to the public. The intent of the General Assembly was to afford the public at large a right of access to government records generally, while permitting some narrow categories of information to be withheld where nondisclosure was believed to be in the public interest.

B. Act applies to all law enforcement records

The starting place for the Open Records Act is that all records prepared and maintained or received in the course of the operation of the agency are presumed to be open for public inspection and copying. This applies to all records compiled for law enforcement or prosecution purposes, including, but not limited to:

- Documents
- Maps
- Photographs
- Papers
- Books
- Tapes
- Letters
- Computer records
- Data
- Email

C. Exemptions to presumption of access interpreted narrowly

Although all public records are presumed to be subject to inspection and copying, Georgia law provides that under certain circumstances some categories of information may be withheld from public disclosure. The Act itself makes clear that such exemptions to the Open Records Act must be interpreted narrowly. The Act also provides that once exempt information is removed or “redacted” from a record, the rest of the record must be made available for inspection and copying. Two particular exemptions for law enforcement records are:

- (1) an exemption that gives law enforcement the discretion to withhold investigative records (other than initial incident or arrest reports) during a pending investigation or prosecution; and
- (2) an exemption that gives law enforcement the discretion to withhold records that are reasonably likely to disclose the identity of a confidential source, the existence

of confidential surveillance or investigation, or confidential investigative or prosecution material which would endanger the life or physical safety of any person.

D. Exemptions to access usually permissive, not mandatory

Some exemptions to the Open Records Act, however, are mandatory and require that law enforcement not release the exempt information. A list of permissive and mandatory exemptions is contained in Appendix 7.

E. Act protects disclosure of information in good faith, punishes willful nondisclosure

Any agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act shall not be liable in any action on account of having provided access.

However, any person who knowingly or willingly violates the provisions of the Open Records Act by failing or refusing to provide access to records not subject to an exception under the Open Records Act, or by knowingly and willingly failing or refusing to provide access to records within the time limits set forth in the Open Records Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1000.00. Alternatively, a civil penalty may be imposed against any person who negligently violates the Open Records Act. The civil penalty shall not exceed \$1000.00 for the first violation and \$2500.00 for each additional violation within a 12 month period after the first penalty or fine was imposed.

F. Act requires an agency to respond and permit access as soon as reasonably possible

An agency is not required to charge a fee for complying with an Open Records Act request. If it chooses to do so, it may obtain reimbursement for certain reasonable costs, but must first notify the party making the request, prior to fulfilling the request, of the estimated cost of the copying, search, retrieval, and other administrative charges. Such notification is a condition of compliance with the law as well as condition for the assessment of any fee in which an agency will seek in excess of \$25.00. If an amount in excess of \$25.00 is sought, an agency may defer search and retrieval of the records until the requestor agrees to pay the estimated cost unless the requestor has stated a willingness to pay a larger amount in his or her request. In any instance in which the estimated cost for production of the records exceeds \$500.00, an agency may insist on prepayment.

II. Pending Investigations/Prosecutions

Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial pro-

lice arrest reports and initial incident reports, are not required to be released.

However, an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated. The Georgia Supreme Court has interpreted “pending investigations” as applying until the investigation is concluded and the file is closed. Records from investigation of cases that are unsolved, but otherwise closed, are subject to the Act’s disclosure requirements.

When a law enforcement agency receives an Open Records Act request for records in a case that has been referred to the District Attorney or Solicitor-General for prosecution but the case has not become final or otherwise terminated, the prosecutor should be immediately notified and, no records should be released without the approval of the prosecutor.

A prosecution is deemed to be pending until such time as all direct appeals of conviction, including writs of certiorari to the United States Supreme Court, have been exhausted. Habeas Corpus actions are not considered to be part of the direct appeal process.¹

III. Types of Records

Set forth below is a brief description of the law regarding the inspection and copying of certain types of records. Although most types of records are subject to access, certain specific information contained in the record may not be. For example, the following information on sworn law enforcement records may be redacted from a record otherwise open to public inspection: address, home telephone number, and identification of immediate family or dependents.

A. Accident reports

Georgia Uniform Motor Vehicle Accident Reports are only subject to public disclosure under the Open Records Act upon the receipt of a “written statement of need” by a person(s) or entity entitled to the report. A model “statement of need” is contained in Appendix 2. Examples of those entitled to obtain accident reports include an individual who:

- Has a personal, professional, or business connection with a party to the accident; owns or leases an interest in property allegedly or actually damaged in the accident.
- Was allegedly or actually injured by the accident; was a witness to the accident; the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

1 See O.C.G.A. § 50-18-72(a)(4); *Parker v. Lee*, 259 Ga. 195 (1989); *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987).

- Is a prosecutor or a publicly employed law enforcement officer;
- Is alleged to be liable to another party as a result of the accident;
- Is an attorney stating he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;
- Is gathering information as a representative of a news media organization, with a written statement affirming the use of the accident report is in compliance with O.C.G.A. §33-24-52, which prohibits the use of the reports in efforts to procure clients, patients, or customers of health care service providers or for attorneys;
- Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, this subparagraph will apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted;
- Is a government agency, requesting reports as part of official duties.

Individual driver history compilations and motor vehicle registration information provided by the Georgia Department of Driver Services and Georgia Department of Revenue must be withheld. A driver's day and month of birth also may be withheld. However, information gathered from the accident scene, including drivers' license numbers, tag numbers, and vehicle registration numbers must be disclosed.²

B. Arrest records

Arrest and booking records of an individual are subject to the Act's disclosure requirements. They may not be displayed on a law enforcement agency website. Any person requesting booking photographs or mug shots must first affirm in writing that the photographs will not be placed in a publication or on a website that charges for the removal or deletion of the photograph.³

C. Autopsy/coroner reports

Autopsy and coroner's reports, except autopsy photographs and crime scene photographs or videos depicting a deceased person in a state of dismemberment or mutilation, are subject to the Act's disclosure requirements.⁴

2 See O.C.G.A. §§ 50-18-72(a)(5), 40-2-130(c)

3 See O.C.G.A. §§ 17-4-27, 50-18-72(a)(4), 35-1-18; *Lebis v. State*, 212 Ga. App. 481 (1994)

4 See O.C.G.A. § 45-16-27; *Kilgore v. R.W. Page Corp.*, 259 Ga. 556 (1989)

D. Case files (investigative records)

1. Records in an active investigation or pending prosecution, other than initial public arrest reports and initial incident reports, are not required to be released. However, an investigation is no longer deemed to be active when the matter is closed, even if it did not result in prosecution and may later be reopened. A prosecution is no longer deemed to be pending when all direct litigation has become final or otherwise terminated.
2. Records in closed investigations are subject to the Act's disclosure requirements.⁵

E. Citations

Uniform Traffic Citations (UTC's) are subject to the Act's disclosure requirements.⁶

F. Crime laboratory reports

Crime laboratory (GBI Division of Forensic Sciences or "DOFS") reports on "closed cases" are subject to the Act's disclosure requirements.⁷

G. Criminal histories

Georgia Crime Information Center (GCIC) or other state, federal, or international criminal history compilations must be withheld, except for any portion of a history containing Georgia felony convictions, which must be disclosed. But, when a criminal history record is in a closed investigatory case file, it is subject to the Act's disclosure requirements unless GCIC has notified the investigatory agency that the history record has been restricted by law.⁸

H. Department policies and procedures

Most departmental policies and procedures are subject to the Act's disclosure requirements. However, departmental policies and procedures which contain information that would divulge the identity of confidential informants or investigations, and information that would jeopardize the life or personal safety of any person are not required to be released.⁹

I. Driving histories/Department of Driver Services records

The Georgia Department of Driver Services (DDS) is prohibited from releasing

5 See O.C.G.A. § 50-18-72(a)(4); *Lebis v. State*, 212 Ga. App. 481 (1994); *Unified Government of Athens-Clarke County v. Athens Newspapers, LLC*, 284 Ga. 192 (2008)

6 See *Waller v. The State*, 231 Ga. App. 323 (1998) (UTC as a court record)

7 See O.C.G.A. § 50-18-72(a)(4)

8 See O.C.G.A. §§ 35-3-34, 35-3-37(k); *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987)

9 See O.C.G.A. § 50-18-72(a)(3)

driving histories or personal information on individual drivers. However, driving histories that have been incorporated by a law enforcement agency into a closed investigatory case file, are subject to the Act's disclosure requirements.¹⁰

J. Electronic surveillance

The “pending investigations/prosecutions” exemption applies to electronic surveillance. This includes attempts, means, methods, results, and even failures, by law enforcement, so long as the investigation and/or prosecution is pending. The contents of intercepted communications which are sealed as required by Federal law may not be disclosed unless they are unsealed or introduced in court pursuant to a court order, even if the case is closed.

Federal law and state law address the disclosure of legally intercepted wire, oral and electronic communications providing as follows:

- An investigator or other officer who has legally obtained such information may disclose it to another investigator or officer if pursuant to the official duties of both.
- Any person who has legally obtained such information may disclose it while giving testimony under oath in any court proceeding.

However, the contents of intercepted communications that have already become “public information” or part of a public record may be disclosed.¹¹

K. Family violence records

Reports relating to investigations of family violence are not subject to release under the Act unless an arrest has been made in the incident(s).¹²

L. In-car and body camera electronic recordings

Police in-car camera or body camera recordings in “closed cases” are subject to the Act's disclosure requirements. Georgia appellate courts have not determined whether such recordings are open records prior to a case being closed.¹³

M. Initial incident reports

Initial incident and police arrest reports are subject to the Act's disclosure requirements, regardless of whether they are part of an active investigation. Additionally,

10 See O.C.G.A. §§ 40-5-2(b), 50-18-72(a)(4), (4.1); *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987)

11 See O.C.G.A. §§ 16-11-62, 16-11-64; 18 U.S.C. §§ 2517, 2518; U.S. Senate Judiciary Committee report on Title III; Sen. Rpt. No. 1097, 90th Cong., 2d Sess. at 93, reprinted in 1968 US Code, Cong. & Admin News, 2112, 2118

12 See O.C.G.A. §§ 17-4-20.1(d), 49-5-41(e)

13 See O.C.G.A. § 50-18-72(a)(4)

any report, whether entitled a “supplemental report,” “narrative report,” or similar document name that is produced as part of an initial incident report or can be characterized as such, is likewise to be disclosed.¹⁴

N. Internal Affairs records

Investigative records of a government agency relating to the suspension, firing, or investigation of complaints against a public employee are subject to the Act’s disclosure requirements 10 days after the investigative record is submitted to the agency for action or the investigation is otherwise concluded or terminated.¹⁵

O. Jail documents

Sheriffs are required to keep a record of all persons committed to the jail of the county of which he or she is sheriff. This record must contain the name of the person committed, such person’s age, sex, race, under what process such person was committed and from what court the process was issued, the crime with which the person was charged, the date of such person’s commitment to jail, the day of such person’s discharge, under what order such person was discharged, and the court from which the order issued. This record is subject to public disclosure.¹⁶

P. 911 materials

911 materials and computer-aided dispatch (CAD) records are subject to the Act’s disclosure requirements, except for audio recordings which contain speech in distress of a caller who died during the call or was a minor at the time of the call. The name, address, or telephone number of the caller may also be redacted if necessary to prevent the disclosure of a confidential source or investigation, or if disclosure would endanger a person’s life or safety.¹⁷

Q. Probation and parole records

All records relative to the statewide probation system are confidential and exempt from release, even by subpoena or under the Open Records Act, unless declassified by the Commissioner of the Department of Corrections by written order. All records relative to the supervision of probationers by private corporations also are exempt from release under the Open Records Act.

14 See O.C.G.A. §§ 40-5-2(b), 50-18-72(a)(4); *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987); see also *Atlanta Journal and Constitution, et al. v. City of Brunswick, et al.*, 265 Ga. 413 (1995)

15 See O.C.G.A. § 50-18-72(a)(8); *Fincher v. State*, 231 Ga. App. 49 (1998)

16 See O.C.G.A. § 42-4-7

17 See O.C.G.A. §§ 50-18-72(a)(26), 50-18-72(a)(26.1); *Robert Allen v. Athens Clarke County et al*, Superior Court of Athens-Clarke County, Case No.: SU-99-CV-1112-J (Aug. 2, 1999) (“911 tapes and CAD transcripts are not exempted by exception (a)(4)”; *The Bainbridge Post Searchlight, Inc. v. Decatur County, Georgia et al.*, Case No. 96-V-302 (Sept. 10, 1996) (“911 incident cards are public records”)

All information, both oral and written, received by the members of the State Board of Pardons and Paroles in the performance of their duties also is confidential and exempt from release, unless the records were already public when received by the Board, even by subpoena or under the Open Records Act, unless declassified by a majority vote of the State Board of Pardons and Parole. However, an alleged parole or probation violator may review the evidence introduced against him at a final hearing on the matter of revocation of parole or conditional release.

Unlawful disclosure of confidential probation and parole records is a misdemeanor.¹⁸

R. Photographs

Photographs in “closed cases” are subject to the Act’s disclosure requirements. However, autopsy photographs and crime scene photographs or videos depicting a deceased person in a state of dismemberment or mutilation, are not subject to disclosure unless requested by a family member who provides proof of kinship or otherwise provides a written release.¹⁹

S. Records from other law enforcement agencies

Records from a government agency that are incorporated into a closed case are subject to the Act’s disclosure requirements unless excluded by a specific exemption. For example, certain federal records that are required to be kept confidential, Department of Family and Children Services records relating to child abuse, and/or records from the Department of Corrections are generally not subject to public disclosure.

Because some records or information received from a federal law enforcement agency may be required to be kept confidential, it is advisable to contact the federal law enforcement agency for guidance regarding public disclosure.²⁰

T. Homeland Security Records

Records, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, are exempted from disclosure in certain circumstances, including records of any government sponsored programs concerning training relative to government security measures which would identify persons being trained or instructors or would reveal prohibited information.

Records subject to this exception are limited to certain records specially identified in the statute. These include current security plans, and vulnerability assessments for any public utility, technology infrastructure, building, facility, function,

18 See O.C.G.A. §§ 42-8-40, 42-8-106, 42-9-53

19 See O.C.G.A. § 45-16-27(d)

20 See O.C.G.A. § 50-18-72(a)(1); *United States v. Napper*, 887 F2d. 1528 (11th Cir. 1989)

or activity; certain plans for protection against terrorist or other attacks; certain documents relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks; certain blueprints, and plans or contingencies that contemplate what will or might be done in response to events of sabotage, criminal, or terrorist acts that might transpire.²¹

U. Victim assistance records

Records of victim assistance personnel appointed by a prosecuting attorney regarding communications with victims, other than a law enforcement officer, are not subject to disclosure, unless the information is disclosed in court.²²

V. Child pornography records

Electronic communication and other records subpoenaed from a service provider as part of a prosecution or investigation for exploitation of children or computer or electronic pornography are exempt from disclosure.²³

IV. Personnel Records

Personnel records of law enforcement personnel are generally subject to public disclosure, but it is permissible to redact:

For any person in the records:

- Social Security number
- Day / month of birth
- Financial information
- Insurance/medical information
- Unlisted or cellular phone
- Personal e-mail address
- Mother's birth name
- Utility account information
- Passwords

For public employees, teachers and sworn law enforcement officers:

- Home address and home telephone number
- Identity of immediate family members or dependents

21 See O.C.G.A. § 50-18-72(a)(25)(A)

22 See O.C.G.A. §17-17-9.1

23 See O.C.G.A. §§35-3-4.1, 16-12-100, 16-12-100.1, 16-12-100.2.

In certain circumstances, news agencies, however, may obtain, upon proper written request, Social Security numbers and day and month of birth.²⁴

The following are examples of personnel records:

A. Applications for employment

Applications for employment are subject to the Act's disclosure requirements after redaction of the information cited above.²⁵

B. Background investigations

Background investigations are subject to the Act's disclosure requirements with the exception of confidential evaluations, examinations undertaken in connection with the employee's appointment or hiring, and background information received from a prior employer if that information would be privileged in the possession of the prior employer.²⁶

C. Benefits selections/payroll deductions

Employee benefits selections and payroll deductions are exempt from release.²⁷

D. Birth certificates

Birth certificates are exempt from release.²⁸

E. Certificates of training

Certificates of training and course completion are subject to the Act's disclosure requirements after redaction of the information cited above.²⁹

F. Commendations

Commendations are subject to the Act's disclosure requirements. However, information in commendations, which may disclose pending investigations or criminal intelligence, may be withheld.³⁰

G. Criminal history background checks

Criminal history background checks which have been incorporated into a person-

24 Consult with your legal advisor as to the applicability of the news media exemption to sworn law enforcement officer's data

25 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

26 See O.C.G.A. §§ 50-18-72(a)(7); 35-8-8(b)(3)

27 See O.C.G.A. § 45-18-53(b)

28 See O.C.G.A. § 31-10-25

29 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

30 See O.C.G.A. § 50-18-72(a)(4); 28 CFR § 23.20(f)(1)

nel file are subject to the Act's disclosure requirements, unless the agency has been told by GCIC that the record has been restricted by law. The federal portion of the criminal history record from the Federal Bureau of Investigation's Interstate Identification Index is exempt from disclosure under Federal law.³¹

H. DD-214s (military discharge forms)

Military discharge forms (DD-214s) are exempt from release and must not be disclosed pursuant to the Open Records Act until after a period of 50 years has elapsed from the date of its filing.³²

I. Driver's license information

Driver's license information, which has been incorporated into a personnel file is subject to the Act's disclosure requirements.³³

J. Financial records

Personal financial data (bank account numbers, direct deposit information, etc.) is exempt from release. The salary and other compensation paid to an employee, however, is subject to the Act's disclosure requirements.³⁴

K. Health insurance records

Health insurance records are exempt from release.³⁵

L. Medical records

Medical records are exempt from release.³⁶

M. Performance evaluations

Performance evaluations are subject to the Act's disclosure requirements after redaction of the information cited above.³⁷

N. Peace Officer Standards and Training certification records

Georgia Peace Officer Standards and Training (POST) certification records are subject to the Act's disclosure requirements after redaction of the information

31 See O.C.G.A. §§ 35-3-34, 35-3-37(k); 50-18-72(a); *United States v. Napper*, 887 F2d. 1528 (11th Cir. 1989); 28 C.F.R. §20.33

32 See O.C.G.A. § 15-6-72(c)(1)

33 See *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987)

34 See O.C.G.A. § 50-18-72(a)(20)(A)

35 See O.C.G.A. § 50-18-72(a)(20)(A)

36 See O.C.G.A. §§ 50-18-72(a)(2), 50-18-72(a)(20)(A), 50-18-72(21)

37 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

cited above.³⁸ However, the contents of POST applications, except to the extent they include court proceedings, shall be considered as confidential and shall be released only to the candidate or peace officer to whom they pertain or to a law enforcement unit considering the candidate or peace officer for employment.³⁹

O. Reprimands/adverse personnel actions

Reprimands and adverse personnel actions are subject to the Act's disclosure requirements after redaction of the information cited above.⁴⁰

P. Training records

Training records are subject to the Act's disclosure requirements after redaction of the information cited above.⁴¹

V. Juvenile Records

A. Public inspection of records generally

Although interpretations of the law on the right of public access to some juvenile law enforcement records vary, there is agreement that the following juvenile records should be disclosed to the public:

For juveniles age 13 or over:

- Incident reports, arrest reports, or closed case files involving crimes that are in the exclusive jurisdiction of the Superior Court or that have been transferred to the Superior Court. These crimes include:
 1. Murder
 2. Murder in the second degree
 3. Voluntary manslaughter
 4. Rape
 5. Aggravated sodomy
 6. Aggravated child molestation
 7. Aggravated sexual battery
 8. Armed robbery if committed with a firearm

38 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

39 See O.C.G.A. § 35-8-15(b)

40 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

41 See O.C.G.A. §§ 50-18-72(a)(20)(A), 50-18-72(21)

- Incident reports, arrest reports, or closed case files involving crimes identified as Class A or Class B designated felony acts in the Juvenile Court Code, which include:
 1. Aggravated assault or assault with a deadly weapon
 2. Aggravated battery
 3. Armed robbery not involving a firearm
 4. Arson in the first degree
 5. Attempted murder
 6. Escape, if prior Class A or Class B felony act
 7. Hijacking a motor vehicle
 8. Home invasion in the first degree
 9. Kidnapping
 10. Participating in criminal gang activity
 11. Trafficking in substances
 12. Arson in the second degree
 13. Battery if the victim is a teacher or other school personnel
 14. Racketeering
 15. Robbery
 16. Smash and grab burglary
 17. Possessing, manufacturing, distributing a destructive device
 18. Distribution to persons under the age of 21

For all juveniles:

- Incident reports, arrest reports, or closed case files that concern a juvenile who has previously been adjudicated delinquent, except as it relates to allegations of sexual assault or dependency.
- Incident reports, arrest reports, accident reports or closed case files involving juvenile traffic offenses (unless the offense is excluded pursuant to O.C.G.A. §15-11-630(b) and the juvenile has not been previously adjudicated for committing a delinquent act).
- Records relating to charges which a juvenile court adjudicated in open court, or records otherwise authorized for disclosure by a juvenile court.⁴²

42 See O.C.G.A. §§ 15-11-630, 15-11-700, 15-11-708

B. Juvenile witnesses/victims

Incident reports, arrest reports and closed investigations where juveniles appear as witnesses or victims should be disclosed. The law does not permit a witness or victim's name to be redacted because of age.

C. Publication of the name or picture of a juvenile

Although the Georgia Code states that the news media may not publish “the name or picture of any child under the jurisdiction of the juvenile court for the first time,” this Code section has been ruled unconstitutional.⁴³

VI. The Open Records Act Process

A. Release of records

A law enforcement agency may, but is not required to, require that all written requests be submitted to a designated person, who may be one of the following: the agency's director, chairperson, or chief executive officer; the senior official at any satellite office; or a designated records custodian clerk or open records officer. If the agency elects to use such a designee, the agency must make the designation in writing and provide it upon request. The agency must also prominently identify the designee on its website, and notify the legal organ of the county of the identity of the designee. The agency cannot delay its response if the designee is unavailable.

A written request for open records is not required by law. However, it is advisable to log or attempt to obtain such requests in writing, to eliminate any dispute as to what was requested or when the request was made. Also, sanctions may not be sought against an agency if the request was oral.

A sample Open Records Act request is attached as Appendix 1. A sample model by which to log a verbal Open Records Act request is attached as Appendix 5.

When records are readily available and subject to public access, they must be provided immediately. When this is not the case, the custodian of records is allowed a “reasonable amount of time” to determine whether the requested records are subject to access under the law. In no event shall this time exceed three business days. The records custodian must respond in one of three ways:

1. If the records exist, are available, and subject to public disclosure under the Open Records Act, the records custodian must permit inspection and copying.
2. If the records exist and are subject to public disclosure but are not available

43 See generally O.C.G.A. §§ 15-11-708; *Florida Publishing Co. v. Morgan*, 253 Ga. 467 (1984); Op. Att'y Gen. 80-11

within three business days of the request, a written description of such records and a timetable for their inspection and copying must be provided within the three-day period. Also, if some, but not all, records are available within three business days, those records should be produced with a timetable for inspection and copying of the remaining records.

3. If access to a record is denied in whole or in part, the records custodian must provide, in writing, the specific legal authority by code section and any applicable subsection exempting such record from release.

Appendix 3 includes several sample model responses to Open Records Act requests. Appendix 4 is a flow chart showing how to process an Open Records Act request.

NOTE: Any person who knowingly or willingly violates the provisions of the Act by failing or refusing to provide access to records not subject to an exception under the Act, or by knowingly and willingly failing or refusing to provide access to records within the time limits set forth in the Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1000.00. Negligent failure to comply with the Open Records Act can lead to a civil fine not to exceed \$1000.00.

B. Non-existent records

If a report, summary, or compilation is not in existence at the time of the request, the records custodian is not required to prepare one in order to respond to the request. However, if the record already exists and is subject to disclosure, the custodian must permit inspection and copying.⁴⁴

C. Electronic records

Records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to records not requested or records exempt from release. In lieu of providing separate printouts or copies of records, an agency may provide access to records through a website accessible to the public.⁴⁵

D. Appropriate charges

1. Fee notification requirement

An agency is not required to charge for complying with an Open Records Act request and may waive any charges. However, if a fee is to be charged, the agency must notify the requester of the estimated costs associated with processing the records within the three-day period and prior to fulfilling the request. If an amount in excess of \$25.00 is sought, an agency

44 See O.C.G.A. §§ 50-18-71(j)

45 See O.C.G.A. § 50-18-71(f)

may defer search and retrieval of the records until the requestor agrees to pay the estimated cost unless the requestor has stated a willingness to pay a larger amount in his or her request. In any instance in which the estimated cost for production of the records exceeds \$500.00, an agency may insist on prepayment.⁴⁶

2. Optional charges

An agency may charge a reasonable fee for the administrative costs associated with the search, retrieval, redaction, review, copying, reproduction and mailing of public records. However, an agency must provide copies of requested documents “in the most economical means available.” For any charge, it is the agency’s burden to demonstrate the charge meets this standard. An agency may also waive this charge.

Agencies may recover copying costs, but must be able to substantiate the per page charge imposed. Unless otherwise specified by state law, an agency may not charge more than 10¢ per page for each copy.

Hourly charges for administrative/clerical tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request. No charge may be made for the first quarter-hour of administrative time.

Where the information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred. However, no charges other than those directly attributable to providing access may be charged where the records are made available by electronic means.

The Georgia Supreme Court has held that no fee may be charged when a person seeks only to review records that are routinely subject to public inspection, such as deeds, city ordinances and zoning maps. An agency also may not charge for time its attorneys spend advising whether records should be disclosed.⁴⁷

3. Specifically permissible charges in excess of 10¢ per page

The Georgia Department of Transportation may charge a fee of \$5.00 for each copy of any accident report received and maintained by the agency.⁴⁸ The Georgia Bureau of Investigation may charge an individual a maximum fee of \$20.00 for a criminal history.⁴⁹

46 See O.C.G.A. §§ 50-18-71(c), 50-18-71(d)

47 See O.C.G.A. §§ 50-18-71(c), 50-18-71(d); *McFrugal Rental of Riverdale v. Garr*, 262 Ga. 369 (1992)

48 See O.C.G.A. § 40-9-30

49 See O.C.G.A. § 35-3-34(d.3)

VII. News Media Access

For the most part, the news media has the same rights of access to information as the public. However, in certain instances, the news media has several additional rights of access.

For example, the news media has access to motor vehicle accident reports if it is gathering information for news reporting and affirms its use of the report complies with the law.⁵⁰ Additionally, the news media has access to individual Social Security numbers and other similar information.⁵¹

As a general rule, the news media has the right to conduct news gathering activities, free from government interference, on property open to the public and from publicly owned property. Government officials may restrict the news media and public from crime and accident scenes only to the extent necessary to preserve the integrity of a site for investigation purposes, for ingress and egress of emergency vehicles, or other reasons of protecting against damage to persons or property.

Absent a court order, government officials have no right to restrict photographs that may be taken or interviews that witnesses are willing to give to the media. If private property owners object to the presence of the media on their property, law enforcement officers may enforce trespass laws against the journalists.

No law enforcement officer or other public official should demand the film, cameras or notes of reporters or photographers, though they may be subject to subpoena or other legal process in certain circumstances.⁵² Additionally, law enforcement officers should not interfere with, demand or seize photographs or video recordings of law enforcement activity taken by private citizens on property open to the public or from publicly owned property. Such records may, however, be subject to subpoena or other legal process.⁵³

50 See O.C.G.A. § 50-18-72(a)(5)

51 See O.C.G.A. § 50-18-72(a)(20)(A)

52 See O.C.G.A. 24-5-508 (Georgia Reporter's Privilege), 42 U.S.C. §2000aa et seq

53 See, e.g., *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) ("The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest."); *Williamson v. Mills*, 65 F.3d 155 (11th Cir 1995) (reversing district court's grant of qualified immunity to a law enforcement officer who seized the film of and arrested a participant in a demonstration); *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2012) (denying claim of qualified immunity to police officer who interfered in plaintiff's use of video recorder: "It is firmly established that the First Amendment's aegis extends further than the text's proscription on laws 'abridging the freedom of speech, or of the press' and encompasses a range of conduct related to gathering and dissemination of information.")

VIII. Records Retention

The retention of public records is a statutory requirement described in the Georgia Records Act. Public officials have the responsibility to ensure that records created within their office be retained as long as required by an approved retention schedule. These schedules are created under the direction of the Georgia Archives, which is part of the University System of Georgia.

Local law enforcement agencies that do not have established record retention schedules should adopt the state's public safety retention schedules for specific record categories. State law enforcement agencies may use their own approved retention schedules or those on the statewide schedule. Prosecutors should use the Judicial Retention Schedules.

Questions regarding the use of and creation of retention schedules should be directed to Georgia Archives. They may be reached at (678) 364-3710. Additional information is available at the program's website at <http://www.georgiaarchives.org/>.

IX. Conclusion

Law enforcement officers should remember that the general rule for open records compliance is one of public disclosure. The Open Records Act mandates that law enforcement records are subject to public inspection and copying unless specific exemptions exist to exclude their release. It is improper for law enforcement officers to circumvent the requirements of the Open Records Act and to restrict public access to these records.

X. Appendices

1. SAMPLE OPEN RECORDS REQUEST

Note: If you want to have evidence of the date of delivery, then delivery can be by hand delivery or by certified mail, return receipt requested.

[Requestor's Letterhead]

[Date]

[Custodian's name]

[Agency's name]

[Street address]

[City, State, Zip]

To whom it may concern:

Pursuant to the Georgia Open Records Act (O.C.G.A § 50-18-70 et seq.) (the "Act"), you are hereby requested to make available for review and copying all files, records and other documents in your possessions that refer, reflect or relate to _____. This request includes, but is not limited to, all documents, notes, correspondence and memoranda evidencing _____, and all communication and correspondence in whatever tangible medium between _____ and among _____ and _____.

If this request is denied in whole or in part, we ask that you cite in writing the specific statutory exemption upon which you have relied, as required by law. We also ask that you release all separate portions of otherwise exempt material. Please waive any costs associated with this request, or first inform us about such costs as required by Georgia law.

As you know, the Act requires a response by you within three business days of your receipt of this letter and provides sanctions for non-compliance.

Should you have any questions, please do not hesitate to contact me at [Your phone number] or [Your E-mail address].

Sincerely,

[Your name]

[Your title]

[Your fax number]

Appendices

2. SAMPLE STATEMENT OF NEED

Accident Reports:

Pursuant to O.C.G.A. § 50-18-72a(5)

Date: _____

To: Custodian of the Records

From: _____

Re: Motor Vehicle Accident Report No. _____

I have a personal, professional, or business relationship with _____.

I own or lease an interest in _____.

I was allegedly or actually injured by the accident which is the subject of this report.

I was a witness to the accident which is the subject of this report.

I am the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident which is the subject of this report.

I am a prosecutor or a publicly employed law enforcement officer.

I am alleged to be liable to another party as a result of the accident which is the subject of this report.

I am an attorney and need the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe.

I am a representative for _____. I am obtaining access to motor vehicle accident reports for the sole purpose of news gathering for my news media organization, and I affirm the use of the accident report is in compliance with O.C.G.A. §33-24-52.

I am conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes.

Signature

Appendices

3. SAMPLE RESPONSES TO OPEN RECORDS REQUESTS

Sample Response:
Records Available

[Agency's letterhead]

[Date]

John Q. Public
123 Main St.
Anytown, Ga. 30001

Reference: Complete murder investigation case file of Jane Doe

Dear Mr. Public:

The following is in response to your Open Records request, received by the [Department] on [date], regarding the above referenced item. A search for the requested information was made and six case volumes have been identified and are available for review. In addition, the [Department] expects to exempt the following information from dissemination:

1. Social Security numbers, month and day of birth, and other personally identifiable information. [See O.C.G.A. § 50-18-72(a)(20)(A)]
2. Any record or related material which identifies any confidential source [See O.C.G.A. § 50-18- 72 (a)(3)]

Please contact [Specify name] at [Telephone number] to make arrangements to review the records.

If you wish to retain a copy of the records or would like the records to be sent directly to you, an invoice for the total administrative costs associated with the preparation of the records is enclosed.

Sincerely,

[Respondent's name]
[Title]

Appendices

3. SAMPLE RESPONSES TO OPEN RECORDS REQUESTS (CONT)

Sample Response:
Cost Estimate

[Agency's letterhead]

[Date]

John Q. Public
123 Main St.
Anytown, Ga. 30001

Reference: Complete murder investigation case file of Jane Doe

Dear Mr. Public:

In response to your Open Records request, received by the [Department] on [date], this will acknowledge the availability of the records requested on the above referenced subject. The charge to provide copies of the records is as follows:

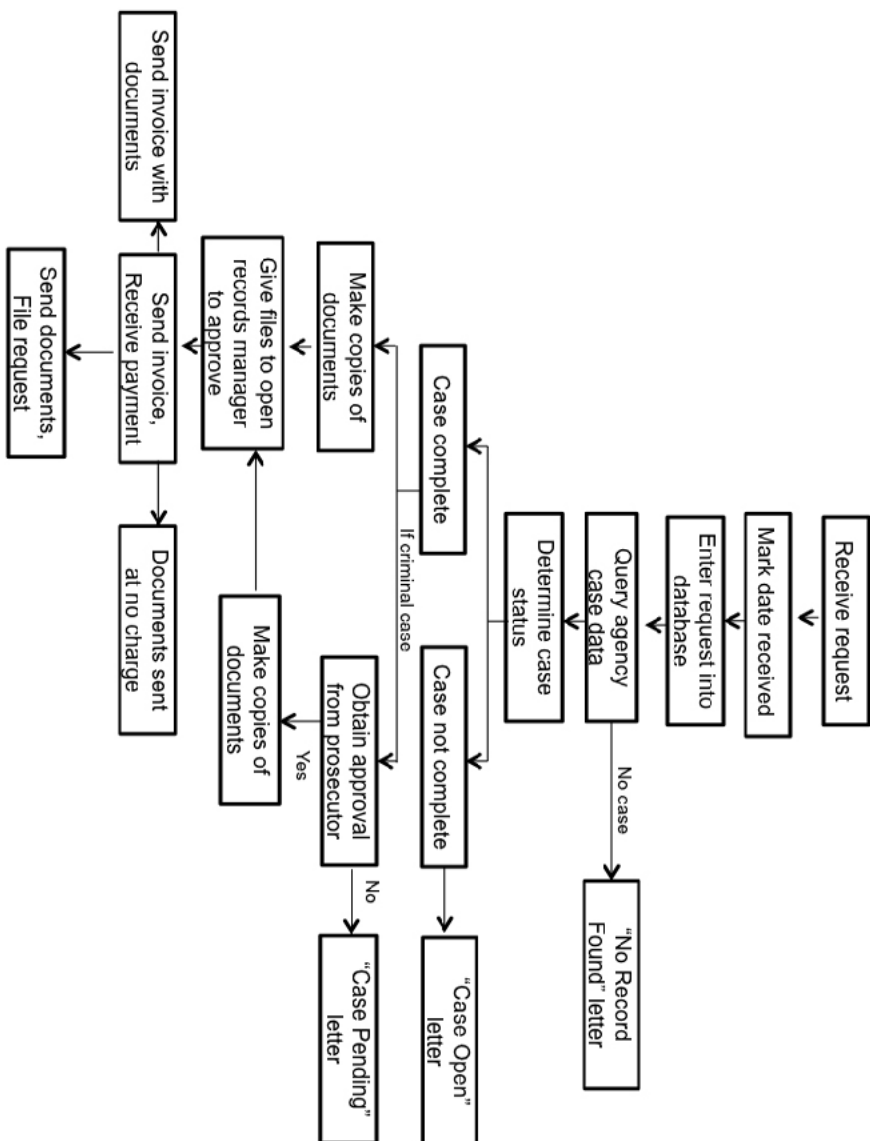
Payment must be received prior to our mailing the requested documents. The [Department's] FIN is 58-1195856. Please mail a copy of this invoice, along with a check or money order for the full amount and payable to [Department], to:

ORA Record # G196L	Qty	Cost
Search, retrieval and review of records @ \$24.09/hour	0.75	\$18.07
Photocopying of case file @ \$14.12/hour	0.5	\$7.06
Page(s) @ .10/page	80	\$8.00
Photographs @ \$3/print	2	\$6.00
Other: Videotape @ \$10/copy	1	\$10.00
Mailing costs (estimate)		\$5.00
Total Cost		\$54.13

[Records custodian]
[Department]
[Street address]
[City, State, Zip]

Appendices

4. SAMPLE OPEN RECORDS REQUEST RESPONSE FLOWCHART



Appendices

5. SAMPLE OPEN RECORDS REQUEST LOG SHEET

Telephone Request (Date/Time): _____

Request made in Person (Time): _____

Requestor Name: _____

Requestor Address: _____

Requestor Phone/Email: _____

Type of Records Requested: _____

Name of Individual (victim/suspect): _____

Date of Incident: _____

County where occurred: _____

Case Number (if available): _____

Other information: _____

Prepared By: _____

Department Employee

Appendices

6. SAMPLE OPEN RECORDS WORKSHEET

This sheet may be used to determine cost estimates, final costs, and serve as the requestor's receipt

[AGENCY NAME]		
OPEN RECORDS COST WORKSHEET		
<p>The following are the actual costs incurred in complying with the request to copy <Agency> records under O.C.G.A. § 50-18-70. (There is no charge for the first quarter hour of time expended in record preparation.) The open records act allows an agency to waive all fees should it so choose. It also authorizes an agency to charge anywhere between \$.00 per page and \$.10 per page. There is no charge for simple inspection of records that are routinely subject to public inspection.</p>		
Number of hours of Search, Review, & Retrieval		
(< 15 minutes - No Charge)		
____ Total hours of Preparation	x <hourly rate of preparer>*	= \$
____ Number of hours of copying	x <hourly rate of preparer>*	= \$
____ Number of pages	x <agency cost per page>**	= \$
	SUB TOTAL	= \$
The following additional costs may be applicable:		
____ # of Copies of Audio Tapes	x <agency cost per copy>	= \$
____ # of Copies of Video Tapes	x <agency cost per copy>	= \$
____ # of Copies of Photographs	x <agency cost per copy>	= \$
____ # of CD's with Digital Photos	x <agency cost per CD>	= \$
Other Agency Cost	<actual agency cost>	= \$
Postage	<cost of postage>	= \$
	GRAND TOTAL	= \$
Case Number / Description of Records		
Preparer's Name:		Date: / /
Amount Received: \$	Received by: Signature	Date:

* Hourly charges for administrative / clerical tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request.

** An agency may not charge more than 10¢ per page for each copy, and also may opt to waive fees.

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE

Public disclosure is not required for certain records and information. The following is a list of records and information exempt from release and the corresponding legal authority. Any agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act shall not be liable in any action on account of having provided access.

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
AIDS/HIV information	50-18-72(a)(2), 31-22-9.1(a)(2)	Mandatory
Autopsy photographs (unless from family member with proof of kinship)	45-16-27(d)	Mandatory
Background investigations of applicants to the Lottery Corporation	50-27-12(e)	Mandatory
Birth certificates	31-10-25(a)	Mandatory
Burglar/fire alarm information (names, home addresses, telephone numbers, security codes, e-mail addresses collected by government agencies through neighborhood watch or notification programs, or alarm systems)	50-18-72 (a)(19)	Discretionary
Carpooling information	50-18-72(a)(24)	Discretionary
Confidential informants	50-18-72(a)(3)	Mandatory
Child abuse reports (where confidential)	49-5-40(b), but disclosure may be required by juvenile court order under 49-5-41(b) or by law if child is deceased pursuant to 49-5-41(e)	Mandatory
Credit report	15 U.S.C. 1681b(a)(4)(D)	Mandatory

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE (CONT)

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Criminal history records other than in-Georgia felony convictions	35-3-34, 35-3-37(k), 28 U.S.C. § 534, 28 C.F.R. §20.33 (NCIC record) (but see Chapter III(G) of this manual regarding disclosure when in closed case file and Chapter IV(G) when in a personnel file)	Mandatory
Deferred compensation salary deductions	45-18-36(b)	Mandatory
Department of Corrections (classified inmate files)	42-5-36(c)	Mandatory
Department of Corrections (classified investigative reports and intelligence data prepared by Internal Affairs)	42-5-36(b)	Mandatory
Department of Human Resources clinical records	37-3-166(a)	Mandatory
Driver's license information to the extent it is obtained from the Georgia Department of Driver Services (DDS)	40-5-2(b)	Mandatory
Evaluations or examinations in connection with new appointments or hires (where confidential)	50-18-72(a)(7)	Discretionary

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE (CONT)

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Federal records required by the federal statute or regulation to be kept confidential	50-18-72(a)(1), but see Georgia Hospital Association v. Ledbetter, 260 Ga. 477 (1990) (no requirement “that a report generated by or used by the state for state purposes be exempted from disclosure merely because the report would be kept confidential if generated or used by the federal government.”)	Mandatory
Flexible employee benefit plan	45-18-53(b)	Mandatory
Grand jury testimony (where confidential)	Federal Rule Criminal Procedure 6(e), Kessler v. State, 249 Ga. 462, 474 (1982)	Mandatory
Home address, home telephone number, social security number, and insurance or medical information of public employees, teachers and employees of a public school	50-18-72(a)(21)	Discretionary
Home address, home telephone number, social security number, and insurance or medical information of law enforcement, judges, crime lab scientists and correctional officers	50-18-72(a)(21)	Discretionary
Information received from an insurance company investigating a fire loss of real or personal property	25-2-33(d)	Mandatory, but review statute

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE (CONT)

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Information, the disclosure of which would constitute an actionable invasion of privacy	50-18-72(a)(2); Harris v. Cox Enterprises, 256 Ga. 299 (1986); Athens Observer v. Anderson, 245 Ga. 63 (1980) (“where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one’s legal right of privacy”)	Mandatory
Juvenile records (where confidential)	15-11-708, but see Chapter V of this manual for list of crimes for which disclosure is required	Mandatory
Medical records	50-18-72(a)(2), (20)	Mandatory
Military discharge (DD-214)	15-6-72(c)(1) Mandatory	Mandatory
Name/ID of rape victim	Doe v. Board of Regents of the University System of Georgia, 215 Ga. App. 684 (1994)	Mandatory, but see Dye v. Wallace, 274 Ga. 257, n.1 (2001).
Open investigation/pending Prosecution	50-18-72(a)(4)	Discretionary
Pardons and Parole Board (classified records)	42-9-53(b)	Mandatory
Probation records (classified records)	42-8-40	Mandatory

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE (CONT)

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence, of abuse or exploitation of residents in long-term care facilities	31-8-86	Mandatory
Social Security number, mother's maiden name, day and month of birth, credit, bank account, account number, including a utility account number, insurance and medical information, unlisted and cellular telephone numbers, e-mail addresses	50-18-72(a)(20)(A)	Mandatory, but see media exception Chapter IV of this manual.
Surveillance/ Investigation (where confidential)	50-18-72(a)(3)	Discretionary
Confidential tax information	48-7-60(a), 48-7-61, Bowers v. Shelton, 265 Ga. 247 (1995)	Mandatory
Vehicle tag number and registration to the extent it is obtained from the Georgia Department of Revenue	40-2-130(c)	Mandatory
Whistleblower's identity (public employee issuing a complaint or providing information concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations)	45-1-4 (c)	Mandatory

Appendices

7. INFORMATION EXEMPT FROM PUBLIC DISCLOSURE (CONT)

****Before relying on an exemption, you must assure yourself that it applies****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Wiretap (technical data)	18 U.S.C. § 2517, 50-18-72(a) (3)	Mandatory
Wiretap (records/docu- ments of)	18 U.S.C. § 2517	Mandatory

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A Law Enforcement Officer's Guide to Open Records in Georgia

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