

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: S3/18/99*

# A Bill

Act 1093 of 1999  
HOUSE BILL 1817

5 By: Representatives Hunt, Taylor  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE § 25-19-105 REGARDING  
10 THE EXAMINATION AND COPYING OF PUBLIC RECORDS UNDER  
11 THE ARKANSAS FREEDOM OF INFORMATION ACT; AND FOR OTHER  
12 PURPOSES. "  
13

### Subtitle

14 "TO AMEND ARKANSAS CODE § 25-19-105  
15 REGARDING THE EXAMINATION AND COPYING OF  
16 PUBLIC RECORDS UNDER THE ARKANSAS  
17 FREEDOM OF INFORMATION ACT. "  
18  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code 25-19-105 is amended to read as follows:  
24 "25-19-105. Examination and copying of public records.

25 (a) Except as otherwise specifically provided by this section or by  
26 laws specifically enacted to provide otherwise, all public records shall be  
27 open to inspection and copying by any citizen of the State of Arkansas during  
28 the regular business hours of the custodian of the records.

29 (b) It is the specific intent of this section that the following shall  
30 not be deemed to be made open to the public under the provisions of this  
31 chapter:

- 32 (1) State income tax records;
- 33 (2) Medical records, scholastic records, and adoption records;
- 34 (3) The site files and records maintained by the Arkansas  
35 Historic Preservation Program and the Arkansas Archeological Survey;
- 36 (4) Grand jury minutes;

1 (5) Unpublished drafts of judicial or quasijudicial opinions and  
2 decisions;

3 (6) Undisclosed investigations by law enforcement agencies of  
4 suspected criminal activity;

5 (7) Unpublished memoranda, working papers, and correspondence of  
6 the Governor, members of the General Assembly, Supreme Court Justices, Court  
7 of Appeals Judges and the Attorney General;

8 (8) Documents which are protected from disclosure by order or  
9 rule of court;

10 (9)(A) Files which, if disclosed, would give advantage to  
11 competitors or bidders; and

12 (B)(i) Records maintained by the Arkansas Economic  
13 Development Commission related to any business entity's planning, site  
14 location, expansion, operations, or product development and marketing, unless  
15 approval for release of such records is granted by the business entity.

16 (ii) Provided, however, this exemption shall not be  
17 applicable to any records of expenditures or grants made or administered by  
18 the Arkansas Economic Development Commission and otherwise disclosable under  
19 the provisions of this chapter;

20 (10) Personnel records to the extent that disclosure would  
21 constitute clearly unwarranted invasion of personal privacy;

22 (11)(A) The identity of law enforcement officers currently  
23 working undercover with their agencies and identified in the Arkansas Minimum  
24 Standards Office as undercover officers

25 (B) Records of the number of undercover officers an agency  
26 lists are not exempt from this chapter; and

27 (12) Division of ownership information on oil or gas leases voluntarily  
28 provided by an oil or gas company to a county assessor, which if disclosed,  
29 could result in an economic loss to the company. This subdivision (12) shall  
30 expire on July 1, 1999.

31 (c)(1) However, all employee evaluation or job performance records,  
32 including preliminary notes and other materials, shall be open to public  
33 inspection only upon final administrative resolution of any suspension or  
34 termination proceeding at which the records form a basis for the decision to  
35 suspend or terminate the employee and if there is a compelling public interest  
36 in their disclosure.

1           (2) Any personnel or evaluation records exempt from disclosure  
2 under this chapter shall nonetheless be made available to the person about  
3 whom the records are maintained or to that person's designated representative.

4           (3)(A) Upon receiving a request for the examination or copying of  
5 personnel or evaluation records, the custodian of the records shall, within  
6 twenty-four (24) hours of the receipt of the request, determine whether the  
7 records are exempt from disclosure and make efforts to the fullest extent  
8 possible to notify the person making the request and the subject of the  
9 records of that decision.

10           (B) If the subject of the records cannot be contacted in  
11 person or by telephone within the twenty-four-hour period, the custodian shall  
12 send written notice via overnight mail to the subject of the records at his  
13 last known address. Either the custodian, requester, or the subject of the  
14 records may immediately seek an opinion from the Attorney General, who, within  
15 three (3) working days of receipt of the request, shall issue an opinion  
16 stating whether the decision is consistent with this chapter. In the event of  
17 a review by the Attorney General, the custodian shall not disclose the records  
18 until the Attorney General has issued his opinion.

19           (C) However, nothing in this subsection (c) shall be  
20 construed to prevent the requester or the subject of the records from seeking  
21 judicial review of the custodian's decision or the decision of the Attorney  
22 General.

23           (d) Reasonable access to public records and reasonable comforts and  
24 facilities for the full exercise of the right to inspect and copy those  
25 records shall not be denied to any citizen.

26           (e) If a public record is in active use or storage and, therefore, not  
27 available at the time a citizen asks to examine it, the custodian shall  
28 certify this fact in writing to the applicant and set a date and hour within  
29 three (3) working days, at which time the record will be available for the  
30 exercise of the right given by this chapter.

31           (f) Notwithstanding any Arkansas law to the contrary, at the conclusion  
32 of any investigation conducted by a state agency in pursuit of civil penalties  
33 against the subject of the investigation, any settlement agreement entered  
34 into by a state agency shall be deemed a public document for the purposes of  
35 this chapter. However, the provisions of this subsection shall not apply to  
36 any investigation or settlement agreement involving any state tax covered by

1 the Arkansas Tax Procedure Act (§ 26-18-101, et seq)."

2

3 SECTION 2. All provisions of this act of a general and permanent nature  
4 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
5 Revision Commission shall incorporate the same in the Code.

6

7 SECTION 3. If any provision of this act or the application thereof to  
8 any person or circumstance is held invalid, such invalidity shall not affect  
9 other provisions or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the provisions of this  
11 act are declared to be severable.

12

13 SECTION 4. All laws and parts of laws in conflict with this act are  
14 hereby repealed.

15

*/s/ Hunt*

16

17

18

APPROVED: 4/5/1999

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36