

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: S3/8/01 S3/20/01 S3/27/01 S3/27/01 H4/5/01*

2 83rd General Assembly

A Bill

Act 1653 of 2001

3 Regular Session, 2001

SENATE BILL 897

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5 By: Senator Brown

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For An Act To Be Entitled

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AN ACT TO AMEND VARIOUS PROVISIONS OF THE FREEDOM
OF INFORMATION ACT; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND VARIOUS PROVISIONS OF THE
FREEDOM OF INFORMATION ACT.

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. Arkansas Code 25-19-103 is amended to read as follows:
20 25-19-103. Definitions.

21 As used in this chapter, unless the context otherwise requires:

22 (1)(A) "Custodian," with respect to any public record, means the
23 person having administrative control of that record.

24 (B) "Custodian" does not mean a person who holds public records
25 solely for the purposes of storage, safekeeping, or data processing for
26 others;

27 (2) "Format" means the organization, arrangement, and form of
28 electronic information for use, viewing, or storage;

29 (3) "Medium" means the physical form or material on which records
30 information may be stored or represented and may include, but is not limited
31 to, paper, microfilm, microform, computer disks and diskettes, optical disks,
32 and magnetic tapes;

33 ~~(2)(4)~~ "Public meetings" means the meetings of any bureau, commission,
34 or agency of the state, or any political subdivision of the state, including
35 municipalities and counties, boards of education, and all other boards,
36 bureaus, commissions, or organizations in the State of Arkansas, except grand

1 juries, supported wholly or in part by public funds or expending public
2 funds; and

3 ~~(1)(5)(A)~~ "Public records" means writings, recorded sounds, films,
4 tapes, electronic or computer-based information, or data compilations in any
5 ~~form~~ medium, required by law to be kept or otherwise kept, and which
6 constitute a record of the performance or lack of performance of official
7 functions which are or should be carried out by a public official or
8 employee, a governmental agency, or any other agency wholly or partially
9 supported by public funds or expending public funds. All records maintained
10 in public offices or by public employees within the scope of their employment
11 shall be presumed to be public records.

12 (B) "Public records" does not mean software acquired by
13 purchase, lease, or license.

14

15 SECTION 2. Arkansas Code 25-19-105 is amended to read as follows:
16 25-19-105. Examination and copying of public records.

17 (a) (1) Except as otherwise specifically provided by this section or by
18 laws specifically enacted to provide otherwise, all public records shall be
19 open to inspection and copying by any citizen of the State of Arkansas during
20 the regular business hours of the custodian of the records.

21 (2)(A) A citizen may make a request to the custodian to inspect,
22 copy, or receive copies of public records.

23 (B) The request may be made in person, by telephone, by
24 mail, by facsimile transmission, by electronic mail, or by other electronic
25 means provided by the custodian.

26 (C) The request shall be sufficiently specific to enable
27 the custodian to locate the records with reasonable effort.

28 (3) If the person to whom the request is directed is not the
29 custodian of the records, the person shall so notify the requestor and
30 identify the custodian, if known to or readily ascertainable by the person.

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

34 (1) State income tax records;

35 (2) Medical records, ~~scholastic records,~~ and adoption records,
36 and education records as defined in the Family Educational Rights and Privacy

1 Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with
2 the provisions of the Family Educational Rights and Privacy Act of 1974;

3 (3) The site files and records maintained by the Arkansas
4 Historic Preservation Program and the Arkansas Archeological Survey;

5 (4) Grand jury minutes;

6 (5) Unpublished drafts of judicial or quasi-judicial opinions and
7 decisions;

8 (6) Undisclosed investigations by law enforcement agencies of
9 suspected criminal activity;

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

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

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

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

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

25 ~~(10) Personnel records to the extent that disclosure would~~
26 ~~constitute clearly unwarranted invasion of personal privacy; and~~

27 ~~(11)(10)(A)~~ The identities of law enforcement officers currently
28 working undercover with their agencies and identified in the Arkansas Minimum
29 Standards Office as undercover officers.

30 (B) Records of the number of undercover officers and
31 agency lists are not exempt from this chapter;

32 (11) Records containing measures, procedures, instructions, or
33 related data used to cause a computer or a computer system or network,
34 including telecommunication networks, or applications thereon, to perform
35 security functions, including, but not limited to, passwords, personal
36 identification numbers, transaction authorization mechanisms, and other means

1 of preventing access to computers, computer systems or networks, or any data
2 residing therein;

3 (12) Personnel records to the extent that disclosure would
4 constitute a clearly unwarranted invasion of personal privacy; and

5 (13) Home addresses of non-elected state employees contained in
6 employer records, except the custodian of the records shall verify an
7 employee's city or county of residence or address on record upon request.

8 (c)(1) ~~However~~ Notwithstanding subdivision (b)(12), all employee
9 evaluation or job performance records, including preliminary notes and other
10 materials, shall be open to public inspection only upon final administrative
11 resolution of any suspension or termination proceeding at which the records
12 form a basis for the decision to suspend or terminate the employee and if
13 there is a compelling public interest in their disclosure.

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

18 (3)(A) Upon receiving a request for the examination or copying
19 of personnel or evaluation records, the custodian of the records shall
20 determine within twenty-four (24) hours of the receipt of the request whether
21 the records are exempt from disclosure and make efforts to the fullest extent
22 possible to notify the person making the request and the subject of the
23 records of that decision.

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

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

1 (d)(1) Reasonable access to public records and reasonable comforts and
2 facilities for the full exercise of the right to inspect and copy those
3 records shall not be denied to any citizen.

4 (2)(A) Upon request and payment of a fee as provided in
5 subdivision (d)(3), the custodian shall furnish copies of public records if
6 the custodian has the necessary duplicating equipment.

7 (B) A citizen may request a copy of a public record in any
8 medium in which the record is readily available or in any format to which it
9 is readily convertible with the custodian's existing software.

10 (C) A custodian is not required to compile information or
11 create a record in response to a request made under this section.

12 (3)(A)(i) Except as provided in subdivision (d)(3)(B) or by law,
13 any fee for copies shall not exceed the actual costs of reproduction,
14 including the costs of the medium of reproduction, supplies, equipment, and
15 maintenance, but not including existing agency personnel time associated with
16 searching for, retrieving, reviewing, or copying the records.

17 (ii) The custodian may also charge the actual costs
18 of mailing or transmitting the record by facsimile or other electronic means.

19 (iii) If the estimated fee exceeds twenty-five
20 dollars (\$25.00), the custodian may require the requestor to pay that fee in
21 advance.

22 (iv) Copies may be furnished without charge or at a
23 reduced charge if the custodian determines that the records have been
24 requested primarily for noncommercial purposes and that waiver or reduction
25 of the fee is in the public interest.

26 (B) The custodian shall provide an itemized breakdown of
27 charges under paragraphs (A) and (B).

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

33 (f)(1) No request to inspect, copy, or obtain copies of public records
34 shall be denied on the ground that information exempt from disclosure is
35 commingled with nonexempt information.

36 (2) Any reasonably segregable portion of a record shall be

1 provided after deletion of the exempt information.

2 (3) The amount of information deleted shall be indicated on the
3 released portion of the record and, if technically feasible, at the place in
4 the record where the deletion was made.

5 (4) If it is necessary to separate exempt from nonexempt
6 information in order to permit a citizen to inspect, copy, or obtain copies
7 of public records, the custodian shall bear the cost of the separation.

8 (g) Any computer hardware or software acquired by an entity subject to
9 § 25-19-103 after July 1, 2001, shall be in full compliance with the
10 requirements of this section and shall not impede public access to records in
11 electronic form.

12 ~~(f)~~(h) Notwithstanding any Arkansas law to the contrary, at the
13 conclusion of any investigation conducted by a state agency in pursuit of
14 civil penalties against the subject of the investigation, any settlement
15 agreement entered into by a state agency shall be deemed a public document
16 for the purposes of this chapter. However, the provisions of this subsection
17 shall not apply to any investigation or settlement agreement involving any
18 state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.
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20 SECTION 3. Arkansas Code Title 25, Chapter 19, Subchapter 1 is amended
21 by adding an additional section to read as follows:

22 25-19-108. Information for public guidance.

23 (a) Each state agency, board, and commission shall prepare and make
24 available:

25 (1) A description of its organization, including central and
26 field offices, the general course and method of its operations, and the
27 established locations including, but not limited to, telephone numbers, and
28 street, mailing, electronic mail, and internet addresses, and the methods by
29 which the public may obtain access to public records;

30 (2) A list and general description of its records, including
31 computer databases;

32 (3)(A) Its regulations, rules of procedure, any formally
33 proposed changes, and all other written statements of policy or
34 interpretations formulated, adopted, or used by the agency, board, or
35 commission in the discharge of its functions.

36 (B)(i) Rules, regulations, and opinions used in this

1 section shall refer only to substantive and material items that directly
2 affect procedure and decision-making.

3 (ii) Personnel policies, procedures, and internal
4 policies shall not be subject to the provisions of this section.

5 (iii) Surveys, polls, and fact gathering for
6 decision-making shall not be subject to the provisions of this section.

7 (iv) Statistical data furnished to a state agency
8 shall be posted only after the agency has concluded its final compilation and
9 result.

10 (4) All documents comprising an administrative adjudication
11 decision, in a contested matter, except the parts of the decision that are
12 expressly confidential under state or federal law; and

13 (5) Copies of all records, regardless of medium or format,
14 released under § 25-19-105 which, because of the nature of their subject
15 matter, the agency, board or commission determines have become or are likely
16 to become the subject of frequent requests for substantially the same
17 records.

18 (b)(1) All materials made available by a state agency, board, or
19 commission, pursuant to subsection (a) and created after July 1, 2003, shall
20 be made publicly accessible, without charge, in electronic form via the
21 Internet.

22 (2) It shall be a sufficient response to request to inspect or
23 copy the materials that they are available on the Internet at a specified
24 location, unless the requestor specifies another medium or format under § 25-
25 19-105-(d)(3)(B).

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27 SECTION 4. Arkansas Code Title 25, Chapter 19, Subchapter 1 is amended
28 by adding an additional section to read as follows:

29 25-19-109. Special requests for electronic information.

30 (a)(1) A custodian, at his or her discretion, may agree to summarize,
31 compile, or tailor electronic data in a particular manner or medium and may
32 agree to provide the data in an electronic format to which it is not readily
33 convertible.

34 (2) Where the cost and time involved in complying with the
35 requests are relatively minimal, custodians should agree to provide the data
36 as requested.

1 (b)(i) If the custodian agrees to a request, the custodian
2 may charge the actual, verifiable costs of personnel time exceeding two (2)
3 hours associated with the tasks, in addition to copying costs authorized by §
4 25-19-105(d)(3).

5 (ii) The charge for personnel time shall not exceed
6 the salary of the lowest paid employee or contractor who, in the discretion
7 of the custodian, has the necessary skill and training to respond to the
8 request.

9 (c) The custodian shall provide an itemized breakdown of charges under
10 subsection (b).

11
12 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
13 General Assembly that confusion exists as to the status of electronic records
14 under the Freedom of Information Act of 1967, as amended; that the right to
15 obtain copies of public records at a reasonable cost is uncertain; that
16 access to certain electronic records may adversely affect the security of
17 computer systems and networks maintained by public entities; and that access
18 to certain student records maintained in electronic form by school districts,
19 institutions of higher education, and state agencies may jeopardize federal
20 funding. Therefore, an emergency is declared to exist and this act being
21 immediately necessary for the preservation of the public peace, health and
22 safety shall become effective on the date of its approval by the Governor.
23 If the bill is neither approved nor vetoed by the Governor, it shall become
24 effective on the expiration of the period of time during which the Governor
25 may veto the bill. If the bill is vetoed by the Governor and the veto is
26 overridden, it shall become effective on the date the last house overrides
27 the veto.

28
29 /s/ Brown

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32 APPROVED: 4/16/2001