

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.

Act 259 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S2/2/05

A Bill

SENATE BILL 200

5 By: Senator Glover
6 By: Representative L. Evans
7

For An Act To Be Entitled

10 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT
11 PROVISIONS AFFECTING THE RECORDS AND MEETINGS OF
12 PUBLIC WATER SYSTEMS; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO AMEND THE FREEDOM OF
15 INFORMATION ACT PROVISIONS AFFECTING THE
16 RECORDS AND MEETINGS OF PUBLIC WATER
17 SYSTEMS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code § 25-19-103, pertaining to definitions used
24 in the Freedom of Information Act, is amended to read as follows:

25 25-19-103. Definitions.

26 As used in this chapter:

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

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

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

34 (3) "Medium" means the physical form or material on which
35 records and information may be stored or represented and may include, but is



1 not limited to, paper, microfilm, microform, computer disks and diskettes,
2 optical disks, and magnetic tapes;

3 (4) "Public meetings" means the meetings of any bureau,
4 commission, or agency of the state, or any political subdivision of the
5 state, including municipalities and counties, boards of education, and all
6 other boards, bureaus, commissions, or organizations in the State of
7 Arkansas, except grand juries, supported wholly or in part by public funds or
8 expending public funds;

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

18 (B) "Public records" does not mean software acquired by
19 purchase, lease, or license; and

20 (6)(A) "Public water system" means all facilities composing a
21 system for the collection, treatment, and delivery of water to the general
22 public, including, but not limited to, reservoirs, pipelines, reclamation
23 facilities, processing facilities, and distribution facilities.

24 (B) Subdivision (6) of this section shall expire on ~~July~~
25 ~~1, 2005~~ July 1, 2007.

26

27 SECTION 2. Arkansas Code § 25-19-105(b), pertaining to examining
28 records under the Freedom of Information Act, is amended to read as follows:

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, adoption records, and education records as
34 defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
35 § 1232g, unless their disclosure is consistent with the provisions of that
36 act;

1 (3) The site files and records maintained by the Arkansas
2 Historic Preservation Program of the Department of Arkansas Heritage and the
3 Arkansas Archeological Survey;

4 (4) Grand jury minutes;

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

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

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

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

14 (9)(A) Files that if disclosed would give advantage to
15 competitors or bidders, and records maintained by the Arkansas Economic
16 Development Commission related to any business entity's planning, site
17 location, expansion, operations, or product development and marketing, unless
18 approval for release of those records is granted by the business entity.

19 (B) However, this exemption shall not be applicable to any
20 records of expenditures or grants made or administered by the commission and
21 otherwise disclosable under the provisions of this chapter;

22 (10)(A) The identities 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 and
26 agency lists are not exempt from this chapter;

27 (11) Records containing measures, procedures, instructions, or
28 related data used to cause a computer or a computer system or network,
29 including telecommunication networks or applications thereon, to perform
30 security functions, including, but not limited to, passwords, personal
31 identification numbers, transaction authorization mechanisms, and other means
32 of preventing access to computers, computer systems or networks, or any data
33 residing therein;

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

36 (13) Home addresses of nonelected state employees, nonelected

1 municipal employees, and nonelected county employees contained in employer
2 records, except that the custodian of the records shall verify an employee's
3 city or county of residence or address on record upon request;

4 (14) Materials, information, examinations, and answers to
5 examinations utilized by boards and commissions for purposes of testing
6 applicants for licensure by state boards or commissions;

7 (15) Military service discharge records or DD Form 214, the
8 Certificate of Release or Discharge from Active Duty of the United States
9 Department of Defense, filed with the county recorder as provided under § 14-
10 2-102, for veterans discharged from service less than seventy (70) years from
11 the current date; and

12 (16)(A) Records, including analyses, investigations, studies,
13 reports, recommendations, requests for proposals, drawings, diagrams,
14 blueprints, and plans, containing information relating to security for any
15 public water system.

16 (B) The records shall include:

17 (i) Risk and vulnerability assessments;

18 (ii) Plans and proposals for preventing and
19 mitigating security risks;

20 (iii) Emergency response and recovery records;

21 (iv) Security plans and procedures; and

22 (v) Any other records containing information that,
23 if disclosed, might jeopardize or compromise efforts to secure and protect
24 the public water system.

25 (C) Subdivision (b)(16) of this section shall expire on
26 ~~July 1, 2005~~ July 1, 2007.

27
28 SECTION 3. Arkansas Code § 25-19-106(c), pertaining to open meetings
29 under the Freedom of Information Act, is amended to read as follows:

30 (c)(1) Executive sessions will be permitted only for the purpose of
31 considering employment, appointment, promotion, demotion, disciplining, or
32 resignation of any public officer or employee. The specific purpose of the
33 executive session shall be announced in public before going into executive
34 session.

35 (2)(A) Only the person holding the top administrative position
36 in the public agency, department, or office involved, the immediate

1 supervisor of the employee involved, and the employee may be present at the
2 executive session when so requested by the governing body, board, commission,
3 or other public body holding the executive session.

4 (B) Any person being interviewed for the top
5 administrative position in the public agency, department, or office involved
6 may be present at the executive session when so requested by the governing
7 board, commission, or other public body holding the executive session.

8 (3) Executive sessions must never be called for the purpose of
9 defeating the reason or the spirit of this chapter.

10 (4) No resolution, ordinance, rule, contract, regulation, or
11 motion considered or arrived at in executive session will be legal unless,
12 following the executive session, the public body reconvenes in public session
13 and presents and votes on the resolution, ordinance, rule, contract,
14 regulation, or motion.

15 (5)(A) Boards and commissions of this state may meet in
16 executive session for purposes of preparing examination materials and answers
17 to examination materials that are administered to applicants for licensure
18 from state agencies.

19 (B) Boards and commissions are excluded from this chapter
20 for the administering of examinations to applicants for licensure.

21 (6)(A) Subject to the provisions of subdivision (c)(4) of this
22 section, any public agency may meet in executive session for the purpose of
23 considering, evaluating, or discussing matters pertaining to public water
24 system security as described in § 25-19-105(b)(16).

25 (B) Subdivision (c)(6) of this section shall expire on
26 ~~July 1, 2005~~ July 1, 2007.

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28 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that provisions in the Freedom of
30 Information Act concerning records and meetings of public water systems will
31 expire on July 1, 2005; that the continued ability of the public to access
32 records of public water systems is necessary in order to ensure that public
33 water systems are operated and managed safely and effectively; and that this
34 act is immediately necessary in order to provide continuous access to the
35 records. Therefore, an emergency is declared to exist and this act being
36 necessary for the preservation of the public peace, health, and safety shall

1 become effective on July 1, 2005.

2 /s/ Glover

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APPROVED: 2/22/2005

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