

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 128

By: Senators Howell, Nelson and Allen

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 93 OF 1967, AS AMENDED [ARK. STATS. §§12-2801--12-2807] TO SPECIFY RECORDS WHICH ARE NOT DEEMED TO BE MADE OPEN TO THE PUBLIC; TO PROVIDE FOR ASSESSMENT OF ATTORNEY FEES AND COSTS; TO PROVIDE ADDITIONAL PENALTIES; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 4 of Act 93 of 1967 as amended, the same being Arkansas Statutes §12-2804, is hereby amended to read as follows:

"Section 4. (a) Except as otherwise specifically provided herein, by laws now in effect, or laws hereinafter specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(b) It is the specific intent of this Section that the following shall not be deemed to be made open to the public under the provisions of this Act: State income tax records; medical records, scholastic records; adoption records; the site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey; grand jury minutes; unpublished drafts of judicial or quasi-judicial opinions and decisions; undisclosed investigations by law enforcement agencies of suspected criminal activity; unpublished memoranda, working papers, and correspondence of the Governor, Legislators, Supreme Court Justices, and the Attorney General; documents which are protected from disclosure by order or rule of court; files which, if disclosed, would give advantage to competitors or bidders; and personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy. Provided, however, that all employee evaluation or job performance records, including preliminary notes

and other materials, shall be open to public inspection only (1) upon final administrative resolution of any suspension or termination proceeding at which such records form a basis for the decision to suspend or terminate the employee, and (2) if there is a compelling public interest in their disclosure.

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

(d) Upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall, within twenty-four hours of the receipt of the request, determine whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision. If the subject of the records cannot be contacted in person or by telephone within the twenty-four hour period, the custodian shall send written notice via overnight mail to the subject of the records at his last known address. Either the custodian, requester or the subject of the records may immediately seek an opinion from the Attorney General, who within three working days of receipt of the request shall issue an opinion stating whether the decision is consistent with this Act. In the event of such review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his opinion. Provided, that nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(e) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy such records shall not be denied to any citizen.

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

SECTION 2. Section 6 of Act 93 of 1967, the same being Arkansas Statutes §12-2806, is hereby amended to read as follows:

"Section 6. (a) Any citizen denied the rights granted to him by this Act may appeal immediately from such denial to the Pulaski Circuit Court, or to the Circuit Court of the residence of the aggrieved party, if an agency of the State is involved, or to any of the Circuit Courts of the appropriate judicial districts when an agency of a county, municipality, township or school district, or a private organization supported by or expending public funds is involved. Upon written application of the person denied the rights provided for in this Act, or any interested party, it shall be mandatory upon the Circuit Court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case. Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(b) In any action to enforce the rights granted by this Act, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of such expenses unjust. Provided, however, that no such expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess such expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes."

SECTION 3. Section 7 of Act 93 of 1967, the same being Arkansas Statutes §12-2807, is hereby amended to read as follows:

"Section 7. Any person who negligently violates any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$200, or 30 days in jail, or both, or a sentence of appropriate public service and/or education."

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the General Assembly that considerable confusion has existed regarding public access to personnel records and employee evaluation records under Act 93 of

1967, as amended; that Act 17 of 1986, Second Extraordinary Session, which exempts employee evaluation records from disclosure, by its own terms ceases to be effective on April 1, 1987; that, as a general matter, the confidentiality of personnel records and employee evaluation records is in the public interest to ensure the privacy of employees and the efficacy of the employee evaluation process; that such records should, however, be open to public inspection in certain circumstances; that guidance from the Attorney General and additional enforcement mechanisms, including attorney fees, litigation costs, and criminal penalties, are necessary to implement the provisions of this Act regarding such records; and that this Act is designed to clarify the law with respect to such records and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

