

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

A Bill

SENATE BILL 805

4
5 By: Senator Argue
6
7

For An Act To Be Entitled

8
9 "AN ACT TO PRESCRIBE THE RELEASE OF DATA MAINTAINED
10 IN ELECTRONIC FORMAT BY CITIES OF THE FIRST AND SECOND
11 CLASS AND INCORPORATED TOWNS; TO STATE LEGISLATIVE
12 FINDINGS; AND FOR OTHER PURPOSES."

Subtitle

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15 "TO PRESCRIBE THE RELEASE OF DATA
16 MAINTAINED IN ELECTRONIC FORMAT BY
17 CITIES OF THE FIRST AND SECOND CLASS AND
18 INCORPORATED TOWNS; TO STATE
19 LEGISLATIVE FINDINGS."
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 14, chapter 42 is amended by adding the
25 following subchapter:

26 "Subchapter 5 - Release of Data Maintained in Electronic Format.

27 14-42-501. Legislative Findings. Cities of the First and Second Class
28 and incorporated towns increasingly maintain data on computers. Citizens and
29 organizations increasingly request that data be furnished to them in a variety
30 of electronic formats. These requests for data in electronic form vary
31 greatly in complexity. Moreover, cities frequently must respond to several
32 requests at one time. The requests must be balanced against unreasonable
33 interference with a governmental entity's duties and responsibilities while
34 protecting the public's right of access to information. This act sets forth
35 the responsibilities of cities of the first and second class and incorporated
36 towns (hereinafter "city" or "cities") in response to requests for data in

1 electronic format.

2 14-42-502. (a) Electronic data that would constitute a public record
 3 under Ark. Code Ann. §25-19-103(1), which are not exempted from disclosure
 4 under Ark. Code Ann. § 25-19-105, shall be available for copying in either
 5 standard electronic or standard hard copy format, as designated by the party
 6 requesting the data, where the city currently maintains the data in electronic
 7 format. A city is not required to convert hard copy format records to
 8 electronic formats.

9 (b) Nothing in this act shall require a city to create a computer
 10 database that the city has not otherwise created or is not otherwise required
 11 to be created. Nothing in this act requires a city to disclose its software
 12 security, including passwords.

13 (c) A standard format for electronic records is American Standard Code
 14 for Information Interchange (ASCII) format. If the city maintains electronic
 15 data in a format other than ASCII format, and this format conforms to the
 16 requestor's requirements, the data may be provided in this alternate
 17 electronic format for standard fees as specified by the public agency. Any
 18 request for data in a form other than the forms described in this section
 19 shall be considered a nonstandardized request.

20
 21 14-42-503. Fees.

22 (a) A city may prescribe a reasonable fee for making copies of
 23 electronic data in standard electronic format, which shall not exceed the
 24 actual cost of reproduction, including the costs of the media and any
 25 mechanical processing cost incurred by the city, but not including labor
 26 costs. If a city is asked to tailor the standard electronic format to meet
 27 the request of an individual or a group, the city may at its discretion
 28 provide the requested format and recover costs as follows, provided, however,
 29 that no charge may be made for the first quarter hour:

30 (1) for data that is the result of computer output other than word
 31 processing, the actual incremental cost of providing the electronic services
 32 and products together with a reasonable portion of the costs associated with
 33 formatting or interfacing the information for particular users: and

34 (2) the cost of staff time for summarizing, compiling, or
 35 tailoring the data either into an organization or media to meet the person's
 36 request; and

1 (3) the cost of labor for search, retrieval, and other direct
 2 administrative costs for complying with a request. The hourly labor charge
 3 may not exceed the salary of the lowest paid employee who, in the discretion
 4 of the custodian of records, has the necessary skill and training to perform
 5 the request..

6 (b) In order to assess any charge, a city shall establish fees by
 7 ordinance or written formal policy adopted by the governing body. The
 8 custodian of the records may request that such fees be prepaid when the cost
 9 is estimated to be in excess of \$10.00. The ordinance or written policy shall
 10 include, at a minimum:

11 (1)an index of all major information systems of the city;

12 (2) a description of major information and record locator systems
 13 maintained by the city;

14 (3) a statement of the business hours maintained by the City and a
 15 definition of "actual business day" for various custodians of city
 16 departments records; and

17 (4) fees.

18 (c) A city may fulfill an electronic data request without charge and is
 19 encouraged to do so when it determines that:

20 (1) the requester is impecunious; or

21 (2) releasing the data primarily benefits the public rather than
 22 a person.

23 Any person who requests an electronic record to obtain information for
 24 a story or report for publication or broadcast to the general public is
 25 presumed to be acting to benefit the public rather than a person.

26
 27 14-42-504. Requests for Electronic Records.

28 (a) a person making a request for an electronic record shall provide the
 29 custodian with their name, mailing address, daytime telephone number, if
 30 available, and a description of the electronic records requested that
 31 identifies the electronic record with reasonable specificity. Custodians of
 32 electronic records shall respond to all such requests as promptly as possible.

33 (b) If the request is granted, and the electronic record is requested
 34 in standard electronic format, the electronic record shall be provided as
 35 soon as reasonably possible. If the request is denied, the denial shall be
 36 accompanied by an explanation of the basis for the denial. If asked to do so,

1 the person denying the request shall, as promptly as possible, reduce the
2 explanation for the denial to writing.

3 (c) The term "as soon as reasonably possible" means, for an electronic
4 record that is readily or routinely accessible, requires no redacting of
5 confidential data or reformatting, and is of sufficient brevity to require no
6 more than twenty (20) pages in printed form, at the time of the request.

7 (d) If the custodian of the record determines that responding to the
8 request will disrupt the work of the city department, or that legal counsel
9 must be obtained; the custodian shall advise the requestor that extraordinary
10 circumstances will delay the inspection or copying, or both, of the record.

11 Such extraordinary circumstances are:

12 (1) the request requires the city to review a large number of
13 records to locate the records requested; or

14 (2) the request requires a city's computer programming department
15 to segregate information that the requester is entitled to inspect from
16 information that the requester is not entitled to inspect; or

17 (3) priority jobs requiring all available computer programmers are
18 in process and removing a programmer to compile information for the request
19 would impair a significant function of the city; or

20 (4) to seek advice of legal counsel

21 (e) If one of the extraordinary circumstances listed in subsection (d)
22 precludes the inspection or copying of an electronic record, or both, as soon
23 as reasonably possible, the city shall notify the requestor that the following
24 time limits apply to the extraordinary circumstance:

25 (1) for records requested under (d)(1) the city shall:

26 (A) disclose the records that it has located;

27 (B) provide the requestor with an estimate of the amount of
28 time it will take to finish the work required to respond to the request; and

29 (C) complete the work and disclose those records the
30 requester is entitled to inspect as soon as reasonably possible.

31 (2) for records requested under (d)(2) the city shall fulfill the
32 request within 15 business days of the original request.

33 (3) for records requested under (d)(3) the city shall fulfill the
34 request and disclose the records as soon as reasonably possible, but no later
35 than within 15 business days of the original request.

36 (4) legal counsel shall respond as promptly as possible to the

1 department to advise whether the electronic record is precluded from
2 inspection.

3 (f) Nothing in this act shall be construed to require a city to respond
4 to a request for a copy of an electronic record by creating or compiling a
5 record that does not exist. If a city, as a service to the requestor,
6 voluntarily elects to create or compile a record, it may charge a reasonable
7 fee for the service as set forth in § 14-42-503 herein.

8
9 14-42-505. Copyrighted material. Federal law limits the provision of
10 copies of copyrighted materials. Cities shall provide copyrighted materials
11 for inspection only. A City is neither required to copy copyrighted materials
12 nor to permit their copying on City premises. A City's use of proprietary
13 software must not diminish the right of requesters to inspect and copy a
14 public record, except for the restrictions of copyright and trade secret laws.

15
16 14-42-506. Access to Records. (a) Any person who is denied access to
17 public records for purposes of inspection and copying may apply to the
18 circuit court of the appropriate judicial district for an order compelling
19 disclosure or copying, and the court shall have jurisdiction to issue such
20 orders. Actions brought pursuant to this section shall be set down for
21 immediate hearing, and subsequent proceedings in such action shall be accorded
22 priority by the trial and appellate courts.

23 (b) In any action brought pursuant to this act in which a party
24 successfully compels the disclosure of public records, the court may, in its
25 discretion, allow the prevailing party to recover reasonable attorneys' fees
26 if:

27 (1) The court finds that the city acted without substantial
28 justification in denying access to the public records; and

29 (2) The court finds that there are no special circumstances that
30 would make the award of attorneys' fees unjust.

31 (c) Any attorneys' fees assessed against a city under this act shall be
32 charged against the operating expenses of the city; provided, however, that
33 the court may order that all or any portion of any attorneys' fees so assessed
34 be paid personally by any city employee or city official found by the court to
35 have knowingly or intentionally committed, caused, permitted, suborned, or
36 participated in a violation of this act. No order against any city employee

1 or city official shall issue in any case where the city employee or city
2 official seeks the advice of an attorney and such advice is followed.

3 (d) If the court determines that an action brought pursuant to this
4 section was filed in bad faith or was frivolous, the court may, in its
5 discretion, assess a reasonable attorney's fee against the person or persons
6 instituting the action and award it to the city as part of the costs."

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8 SECTION 2. All provisions of this act of general and permanent nature
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
10 Revision Commission shall incorporate the same in the Code.

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12 SECTION 3. If any provisions of this act or the application thereof to
13 any person or circumstance is held invalid, the invalidity shall not affect
14 other provisions or applications of the act which can be given effect without
15 the invalid provisions or application, and to this end the provisions of this
16 act are declared to be severable.

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