

State of Arkansas  
85th General Assembly  
Regular Session, 2005

# A Bill

SENATE BILL 200

By: Senator Glover

## For An Act To Be Entitled

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

## Subtitle

AN ACT TO AMEND THE FREEDOM OF  
INFORMATION ACT PROVISIONS AFFECTING THE  
RECORDS AND MEETINGS OF PUBLIC WATER  
SYSTEMS.

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

SECTION 1. Arkansas Code § 25-19-103, pertaining to definitions used  
in the Freedom of Information Act, is amended to read as follows:

25-19-103. Definitions.

As used in this chapter:

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

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

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

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



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

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

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

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

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

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

(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 chapter:

(1) State income tax records;

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

(3) The site files and records maintained by the Arkansas Historic Preservation Program of the Department of Arkansas Heritage and the

1 Arkansas Archeological Survey;

2 (4) Grand jury minutes;

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

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

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

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

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

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

20 (10)(A) The identities of law enforcement officers currently  
21 working undercover with their agencies and identified in the Arkansas Minimum  
22 Standards Office as undercover officers.

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

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

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

34 (13) Home addresses of nonelected state employees, nonelected  
35 municipal employees, and nonelected county employees contained in employer  
36 records, except that the custodian of the records shall verify an employee's

city or county of residence or address on record upon request;

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

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

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

(B) The records shall include:

- (i) Risk and vulnerability assessments;
- (ii) Plans and proposals for preventing and mitigating security risks;
- (iii) Emergency response and recovery records;
- (iv) Security plans and procedures; and
- (v) Any other records containing information that, if disclosed, might jeopardize or compromise efforts to secure and protect the public water system.

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

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

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

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission,

1 or other public body holding the executive session.

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

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

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

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

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

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

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

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