

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
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

8
9 **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

14 **Subtitle**

15 AN ACT TO AMEND THE FREEDOM OF
16 INFORMATION ACT PROVISIONS AFFECTING THE
17 RECORDS AND MEETINGS OF PUBLIC WATER
18 SYSTEMS.
19

20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

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
36 not limited to, paper, microfilm, microform, computer disks and diskettes,



1 optical disks, and magnetic tapes;

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

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

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

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

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

25

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

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

31 (1) State income tax records;

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

36 (3) The site files and records maintained by the Arkansas

1 Historic Preservation Program of the Department of Arkansas Heritage and the
2 Arkansas Archeological Survey;

3 (4) Grand jury minutes;

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

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

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

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

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

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

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

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

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

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

35 (13) Home addresses of nonelected state employees, nonelected
36 municipal employees, and nonelected county employees contained in employer

1 records, except that the custodian of the records shall verify an employee's
2 city or county of residence or address on record upon request;

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

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

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

15 (B) The records shall include:

16 (i) Risk and vulnerability assessments;

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

19 (iii) Emergency response and recovery records;

20 (iv) Security plans and procedures; and

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

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

26
27 SECTION 3. Arkansas Code § 25-19-106(c), pertaining to open meetings
28 under the Freedom of Information Act, is amended to read as follows:

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

34 (2)(A) Only the person holding the top administrative position
35 in the public agency, department, or office involved, the immediate
36 supervisor of the employee involved, and the employee may be present at the

1 executive session when so requested by the governing body, board, commission,
2 or other public body holding the executive session.

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

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

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

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

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

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

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

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

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/s/ Glover