

1 State of Arkansas As Engrossed: H3/14/17 H3/16/17

2 91st General Assembly **A Bill**

3 Regular Session, 2017

HOUSE BILL 1946

4

5 By: Representative Tucker

6 By: Senator Bond

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING ACCESS TO PUBLIC
10 INFORMATION; TO AMEND THE FREEDOM OF INFORMATION ACT
11 OF 1967; AND FOR OTHER PURPOSES.

12

13

14

Subtitle

15

TO AMEND THE LAW CONCERNING ACCESS TO
16 PUBLIC INFORMATION; AND TO AMEND THE
17 FREEDOM OF INFORMATION ACT OF 1967.

18

19

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

21

22 *SECTION 1. Arkansas Code Title 25, Chapter 19, Subchapter 1, is*
23 *amended to add an additional section to read as follows:*

24 *25-19-111. Review panel – Creation.*

25 *(a) There is created a review panel to conduct independent and*
26 *unbiased reviews of requests for records under this chapter.*

27 *(b)(1)(A) The panel shall consist of three (3) attorneys who are:*

28 *(i) Residents of this state; and*

29 *(ii) Knowledgeable in matters concerning the Freedom*
30 *of Information Act of 1967, § 25-19-101 et seq.*

31 *(B) Two (2) of the panel attorneys shall be licensed to*
32 *practice law in this state.*

33 *(C) One (1) panel attorney shall:*

34 *(i) Teach or have taught at a law school in this*
35 *state; and*

36 *(ii) Be licensed to practice law in any state in the*



1 United States or in the District of Columbia.

2 (2) One (1) panel attorney shall be appointed by the Speaker of
3 the House of Representatives.

4 (3) One (1) panel attorney shall be appointed by the Governor.

5 (4) One (1) panel attorney be appointed by the President Pro
6 Tempore of the Senate.

7 (c)(1) Each panel attorney shall serve staggered six-year terms.

8 (2) A vacancy on the panel shall be filled in the manner of the
9 original appointment.

10 (d)(1)(A) The review of the panel shall be conducted in private.

11 (B) The review of the panel is confidential and not
12 subject to disclosure under the Freedom of Information Act of 1967, § 25-19-
13 101 et seq.

14 (2) The meetings of the panel may be conducted telephonically.

15 (e)(1)(A) A requestor of records under this chapter may ask the panel
16 to review a request for records that was denied by the custodian of the
17 records.

18 (B)(i) A requestor under subdivision (e)(1)(A) of this
19 section may submit his or her request for review to the panel regardless of
20 whether the requestor is also pursuing an appeal under § 25-19-107.

21 (ii) A review of the request for records by the
22 panel shall be considered separate from any pending matter before a court,
23 and the decision and process of review by the panel has no bearing on the
24 pace or outcome of a judicial remedy.

25 (2) A custodian shall submit the records in question to the
26 panel and for each record in question shall supply the authority under the
27 Freedom of Information Act of 1967, § 25-19-101 et seq., that is the basis of
28 the custodian's refusal to supply the records in question.

29 (f)(1) A custodian may ask for a decision from the panel concerning an
30 original request for records, but this does not place a burden on the panel
31 to comply with the time period under § 25-19-105.

32 (2) If the panel cannot render a decision within the timeframe
33 under § 25-19-105, the custodian shall still comply with the time period
34 under § 25-19-105.

35 (g)(1)(A) The panel may make rules that specify what facts and
36 arguments the custodian and the requestor shall bring to the panel regarding

1 the records in question.

2 (B) Rules promulgated by the panel are exempt from the
3 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

4 (2) The rules under subdivision (g)(1) of this section are
5 binding and shall be enforced by the panel.

6 (h)(1) The panel shall follow governing law under the Freedom of
7 Information Act of 1967, § 25-19-101 et seq., and the law applied by courts
8 in this state in conducting reviews requested under this section.

9 (2) If a request to produce records is denied by a custodian
10 based on an exemption under § 25-19-105(b)(16)-(23), or an exemption to the
11 Freedom of Information Act of 1967, § 25-19-101 et seq., enacted after
12 January 1, 2017, and the requestor appeals the denial to the panel, then the
13 panel shall decide that the record or records in question become public
14 unless the public's interest in the release of the record or records is
15 outweighed by the state's interest in the confidentiality of the record or
16 records.

17 (i)(1) The decisions of the panel shall be final and binding.

18 (2) Either the requestor or the custodian may appeal the
19 decision of the panel to a court under § 25-19-107.

20 (3) A conflict between a decision of the panel and the decision
21 of the court under § 25-19-107 shall be resolved in favor of the decision by
22 the court.

23 (j) A custodian who denies a request under this chapter shall advise
24 the requestor of the option to:

25 (1) Seek review by the panel under this section; and

26 (2) Appeal the decision of the custodian under § 25-19-107.

27 (k)(1) A panel attorney is not subject to personal liability due to
28 his or her participation on the panel.

29 (2) A panel attorney who is a law professor under subdivision
30 (b)(1)(C) of this section shall recuse himself or herself from a review if
31 the custodian of the record or records in question submitted to the panel for
32 review is an institution where the panel attorney is currently employed or
33 was previously employed.

34 (l) The three (3) panel attorneys may each receive a stipend of up to
35 eighty-five dollars (\$85.00) per meeting under § 25-16-904.

36 (m) The panel attorneys shall be appointed within thirty (30) days of

1 the effective date of this act.

2

3 SECTION 2. Arkansas Code § 25-16-904, concerning stipend
4 authorization, is amended to add an additional subdivision to read as
5 follows:

6 (24) The review panel under the Freedom of Information Act of
7 1967, § 25-19-101 et seq.

8

9

10 /s/Tucker

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36