

1 State of Arkansas *As Engrossed: H3/14/17 H3/16/17 H3/23/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 1946

4

5 By: Representatives Tucker, *Ballinger*

6 By: Senator Bond

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For An Act To Be Entitled

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AN ACT TO AMEND THE LAW CONCERNING ACCESS TO PUBLIC

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INFORMATION; TO AMEND THE FREEDOM OF INFORMATION ACT

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OF 1967; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND THE LAW CONCERNING ACCESS TO

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PUBLIC INFORMATION; AND TO AMEND THE

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FREEDOM OF INFORMATION ACT OF 1967.

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

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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) members 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) One (1) member of the panel shall be an attorney who*

32 *is licensed to practice law in this state.*

33 *(C) One (1) member of the panel shall be an attorney who:*

34 *(i) Teaches or has taught at a law school in this*

35 *state; and*

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



1 United States or in the District of Columbia.

2 (D) One (1) member of the panel shall be a former
3 custodian of records who has experience responding to requests for
4 information under the Freedom of Information Act of 1967, § 25-19-101 et seq.

5 (2) The members of the panel shall be appointed in the following
6 manner:

7 (A) One (1) member of the panel shall be appointed by the
8 Speaker of the House of Representatives;

9 (B) One (1) member of the panel shall be appointed by the
10 Governor; and

11 (C) One (1) member of the panel shall be appointed by the
12 President Pro Tempore of the Senate.

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14 (3) An action by the panel may be taken upon two (2) concurring
15 votes of the members of the panel.

16 (c)(1) Each member of the panel shall serve staggered six-year terms.

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

19 (3) A member of the panel may be reappointed to a successive
20 term or terms or to fill another vacancy on the panel.

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

22 (B)(i)(a) If the panel decides that the record or records
23 in question, in whole or in part, shall remain confidential and not be
24 subject to public disclosure, the review by the panel is not subject to
25 disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

26 (b) The panel may make a decision as to a
27 portion of the record or records in question and the confidentiality of the
28 record or records in question.

29 (c) The panel may determine that confidential
30 information is so intertwined with the record or records in question that it
31 renders the entire record or records in question confidential and not subject
32 to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et
33 seq.

34 (ii) A member of the panel shall not disclose any
35 information related to the record or records in question under subdivision
36 (d)(1)(B)(i) of this section that is learned by the member of the panel due

1 to his or her service on the panel.

2 (iii) However, subdivision (d)(1)(B)(ii) of this
3 section shall not apply to information related to the record or records in
4 question that is learned by the member of the panel from another source other
5 than his or her service on the panel.

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

7 (e)(1)(A)(i) A requestor of records under this chapter may ask the
8 panel to review a request for records that was denied by the custodian of the
9 records.

10 "(ii) A review by the panel shall be de novo.

11 (iii) This section does not interfere with the right
12 of a resident of this state to pursue a claim in court under § 25-19-107."

13 (iv)(a) The panel may, in its discretion, deny a
14 request for a review by the panel under subdivision (e)(1)(A)(i) of this
15 section or under subdivision (f)(1) of this section.

16 (b) If the panel denies a request for a review
17 by the panel under subdivision (e)(1)(A)(iv)(a) of this section, the panel
18 shall send notification of its decision to the party who made the request for
19 a review by the panel.

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

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

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

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

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

1 (g)(1)(A) The panel may make rules that specify what facts and
2 arguments the custodian and the requestor shall bring to the panel regarding
3 the records in question.

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

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

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

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

19 (i)(1)(A) A decision of the panel shall be final and binding, unless
20 the decision of the panel is appealed to a court.

21 (B)(i) Either the requestor or the custodian may appeal
22 the decision of the panel.

23 (ii) A member of the panel who is an attorney is
24 prohibited from representing either the requestor or the custodian in an
25 appeal.

26 (C) If the custodian appeals the decision of the panel,
27 the custodian shall provide written notice to the panel within two (2) days
28 after the day the panel issues its decision.

29 (2) A decision of the panel that is appealed shall be reviewed
30 by a court de novo.

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

34 (j)(1) If the panel decides that the record or records in question
35 before the panel shall become public, the record or records shall become
36 public within two (2) business days after the day the panel issues its

1 decision, unless the decision is appealed by the custodian under subdivision
2 (i)(1)(C) of this section.

3 (2) If the decision of the panel is appealed by the custodian,
4 the record or records under subdivision (j)(1) of this section shall become
5 public within ten (10) business days after the day the panel issues its
6 decision unless a court rules otherwise.

7 (k) A custodian who denies a request under this chapter shall advise
8 the requestor of the option to:

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

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

11 (1)(1) A member of the panel is not subject to personal liability due
12 to his or her participation on the panel.

13 (2)(A)(i) A requestor or a custodian under this section may request
14 that a member of the panel recuse himself or herself from a review by the
15 panel if circumstances exist that would create a conflict between the member
16 of the panel and the requestor or the custodian.

17 (ii) A member of the panel who is a law professor
18 under subdivision (b)(1)(C) of this section shall recuse himself or herself
19 from a review if the custodian is an institution where the panel attorney is
20 currently employed or was previously employed.

21 (iii) A member of the panel shall recuse himself or
22 herself from a review by the panel if the custodian is an entity where the
23 member of the panel is currently employed or was previously employed, or if
24 the member of the panel has an ongoing pecuniary interest in or relationship
25 with the entity.

26 (B) If a member of the panel recuses himself or herself
27 from a review by the panel under subdivision (1)(2)(A) of this section, a
28 qualified person shall be appointed in the same manner as the original
29 appointment of the member of the panel that recused himself or herself from a
30 review by the panel.

31 (m) The three (3) members of the panel may each receive a stipend of
32 up to eighty-five dollars (\$85.00) per meeting under § 25-16-904.

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

1 (24) The review panel under the Freedom of Information Act of
2 1967, § 25-19-101 et seq.

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4 SECTION 3. DO NOT CODIFY. Temporary legislation.

5 (a) The members of the panel shall be appointed within thirty (30)
6 days of the effective date of this act.

7 (b)(1) The panel shall hold its first meeting within ninety (90) days
8 of the effective date of this act.

9 (2) At the first meeting of the panel, the members shall draw
10 lots for terms so that one (1) member will serve for a term of four (4)
11 years; one (1) member will serve for a term of five (5) years; and one (1)
12 member will serve for a term of six (6) years.

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14 /s/Tucker
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