

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4
5 By: Representative Ray
6 By: Senator B. Davis
7

A Bill

HOUSE BILL 1726

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE FREEDOM OF
10 INFORMATION ACT OF 1967; TO AMEND THE LAW CONCERNING
11 DEFINITIONS USED IN THE FREEDOM OF INFORMATION ACT OF
12 1967; TO ADD PUBLIC RECORDS EXEMPTIONS; TO AMEND
13 PUBLIC MEETINGS REQUIREMENTS; TO AMEND REQUIREMENTS
14 RELATED TO CUSTODIANS PROCESSING PUBLIC RECORDS
15 REQUESTS; AND FOR OTHER PURPOSES.

Subtitle

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19 TO AMEND THE FREEDOM OF INFORMATION ACT
20 OF 1967; TO ADD DEFINITIONS; TO ADD
21 PUBLIC RECORDS EXEMPTIONS; TO AMEND
22 PUBLIC MEETINGS REQUIREMENTS; AND TO
23 AMEND REQUIREMENTS RELATED TO CUSTODIANS
24 PROCESSING PUBLIC RECORDS REQUESTS.

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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code § 25-19-103, concerning definitions used
30 under the Freedom of Information Act of 1967, is amended to add additional
31 subdivisions to read as follows:

32 (10) "Governmental agency" means an office, department,
33 commission, council, board, committee, legislative body, agency, or other
34 establishment of the executive, judicial, or legislative branch of the state,
35 including without limitation the office of a public official;

36 (11) "Public appointee" means an individual who is appointed to



1 a governmental agency.

2 (12) "Public employee" means an individual who is employed by a
 3 governmental agency or who is appointed to serve a governmental agency;

4 (13) "Public official" means a person holding an elective office
 5 of any governmental agency, whether elected or appointed to the office; and

6 (14) "Public servant" means a person who is serving at the state
 7 level of government and is a:

8 (A) Public appointee;

9 (B) Public employee; or

10 (C) Public official.

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 12 SECTION 2. Arkansas Code § 25-19-105(b)(6), concerning records not to
 13 be deemed to be made open to the public under the Freedom of Information Act
 14 of 1967, is amended to read as follows:

15 (6) Undisclosed or ongoing investigations by law enforcement
 16 agencies of suspected criminal activity and any evidence or materials likely
 17 to be used by law enforcement in a criminal prosecution;

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 19 SECTION 3. Arkansas Code § 25-19-105(b), concerning records not to be
 20 deemed to be made open to the public under the Freedom of Information Act of
 21 1967, is amended to add additional subdivisions to read as follows:

22 (28) Communication between a public servant acting in the
 23 performance of his or her duties or within the scope of his or her employment
 24 and the legal counsel of a governmental agency, relating to legal advice or
 25 assistance provided to the public servant in the performance of his or her
 26 duties, including without limitation:

27 (A) Records or memoranda prepared by the legal counsel
 28 related to the legal advice or assistance provided; and

29 (B) Communication between the legal counsel of the
 30 governmental agency and the legal counsel of another governmental agency, if
 31 the communication is related to the advice or assistance provided;

32 (29) A record that was prepared:

33 (A) By an attorney representing a governmental agency or a
 34 public servant acting in the performance of his or her duties or within the
 35 scope of his or her employment; and

36 (B) In anticipation of litigation or for use in pending

1 litigation;

2 (30) Deliberative process records of a governmental agency in
3 which opinions are expressed or policies or actions are formulated, if
4 related to a needed determination of policy or action and created or received
5 by the agency, including without limitation:

6 (A) Drafts;

7 (B) Notes;

8 (C) Recommendations;

9 (D) Memoranda;

10 (E) Correspondence; and

11 (F) Other records, if related to an agency determination
12 of policy or action; and

13 (31)(A) Data, records, or information that is:

14 (i) Of a proprietary nature;

15 (ii) Produced or collected by or for faculty, staff,
16 students, or contractors of an institution of higher education, a
17 governmental agency, or a public or private entity supporting or
18 participating in the conduct of research on agricultural, medical,
19 commercial, scientific, technical, scholarly, institutional, or artistic
20 matters, whether sponsored by the institution of higher education alone or in
21 conjunction with a contractor, governmental agency, or public or private
22 entity; and

23 (iii) Not publicly released, published, copyrighted,
24 or patented.

25 (B) The exemption provided in subdivision (b)(30)(A) of
26 this section includes without limitation:

27 (i) Information that discloses the identity of any
28 participants or private entities in the research;

29 (ii) Information provided by participants in the
30 research;

31 (iii) Research notes and data;

32 (iv) Discoveries;

33 (v) Methodologies;

34 (vi) Protocols; and

35 (vii) Creative works.

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1 SECTION 4. Arkansas Code § 25-19-105(d)(3)(A), concerning the
2 examination and copying of public records under the Freedom of Information
3 Act of 1967, is amended to read as follows:

4 (3)(A)(i)(a) Except as provided in subdivision (d)(3)(A)(i)(b)
5 of this section, § 25-19-109, or by law, any fee for copies shall not exceed
6 the actual costs of reproduction, including the costs of the medium of
7 reproduction, supplies, equipment, and maintenance, but not including
8 existing agency personnel time associated with searching for, retrieving,
9 reviewing, or copying the records.

10 (b) If personnel time to retrieve, review,
11 redact, and provide records exceeds eight (8) hours, personnel time exceeding
12 eight (8) hours may be charged at a rate not to exceed the salary or hourly
13 pay of the lowest paid employee or contractor who, in the discretion of the
14 custodian, has the necessary skill and training to respond to the request.

15 (ii)(a) The custodian may also charge the actual
16 costs of mailing or transmitting the record by facsimile or other electronic
17 means.

18 (b) If the custodian's existing software
19 requires that records be printed out and scanned electronically to be
20 electronically transmitted, the custodian may charge the requestor for the
21 actual cost incurred to print and scan the records.

22 (iii) If the estimated fee exceeds twenty-five
23 dollars (\$25.00), the custodian may require the requestor to pay that fee in
24 advance.

25 (iv) Copies may be furnished without charge or at a
26 reduced charge if the custodian determines that the records have been
27 requested primarily for noncommercial purposes and that waiver or reduction
28 of the fee is in the public interest.

29 (v)(a) Except as provided in § 25-19-109 or
30 otherwise in this section, the custodian may not charge a fee for the
31 requestor's inspection or copying, including without limitation copying
32 through image capture, including still and moving photography and video and
33 digital recording, of public records.

34 (b) If personnel time to retrieve, print,
35 copy, or otherwise provide records for the requestor's inspection or copying
36 exceeds eight (8) hours, personnel time exceeding eight (8) hours may be

1 charged at a rate not to exceed the salary or hourly pay of the lowest paid
2 employee or contractor who, in the discretion of the custodian, has the
3 necessary skill and training to respond to the request.

4 (vi) If a requestor has outstanding invoices for
5 requests previously filled under this section, the custodian may refuse to
6 fulfill any new requests from the delinquent requestor under this section
7 until the outstanding invoices are paid in full.

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9 SECTION 5. Arkansas Code § 25-19-105(e), concerning the examination
10 and copying of public records under the Freedom of Information Act of 1967,
11 is amended to read as follows:

12 (e)(1) If a public record is in active use or storage and therefore
13 not available at the time a citizen asks to examine it, the custodian shall
14 certify this fact in writing to the applicant and set a date and hour within
15 ~~three (3)~~ ten (10) working days at which time the record will be available
16 for the exercise of the right given by this chapter.

17 (2) If it is not practicable to retrieve, review, redact, and
18 provide requested public records within the normal business hours of the
19 number of working days specified in subdivision (e)(1) of this section, the
20 custodian shall notify the requestor of the necessary delay in writing and
21 shall provide the following information:

22 (A) The date and time at which the records will be made
23 available;

24 (B) The specific reason why the records cannot be produced
25 within the applicable time period; and

26 (C) A breakdown of the estimated employee or contractor
27 time that will be spent fulfilling the request.

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29 SECTION 6. Arkansas Code § 25-19-106(c)(1)(A), concerning open public
30 meetings under the Freedom of Information Act of 1967, is amended to read as
31 follows:

32 (c)(1)(A) Except as provided under subdivision (c)(6) of this section,
33 an executive session will be permitted only for the purpose of: ~~considering~~

34 (i) Considering employment, appointment, promotion,
35 demotion, disciplining, or resignation of any public officer or employee; or

36 (ii) Discussing matters related to cybersecurity or

1 cyberattacks that could expose a governing body to vulnerabilities if made
2 public.

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