

SB196 ENGROSSED



1 JISSNY-2
2 By Senators Orr, Albritton, Livingston, Butler, Allen,
3 Waggoner, Jones
4 RFD: County and Municipal Government
5 First Read: 11-Apr-23
6
7 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to open records; to amend Section 36-12-41, Code of Alabama 1975, and add Sections 36-12-43, 36-12-44, and 36-12-45 to the Code of Alabama 1975, to establish procedures for requesting and obtaining public records; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 36-12-41 of the Code of Alabama 1975, is amended to read as follows:

"§36-12-41

(a) Every public officer having ~~the~~ custody of a public ~~writing which~~ record that a citizen has a right to inspect is ~~bound to give him~~ required to provide him or her, on demand, with a certified copy of ~~it~~ the public record, on payment of the legal fees therefor, and ~~such the~~ copy ~~is~~ shall be admissible as evidence in like cases and with like effect as the original writing.

(b) For purposes of this article, a "public record" does not include a record of the judicial branch of state government."



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29 Section 2. Sections 36-12-43, 36-12-44, and 36-12-45
30 are added to the Code of Alabama 1975, to read as follows:

31 §36-12-43

32 (a) A citizen may request access to a public record by
33 delivering the request by hand or by mailing the request to
34 the public officer having custody of the public record. A
35 request for access to a public record may be made
36 electronically if the public officer having custody of the
37 public writing has established a written process for accepting
38 electronic requests. A request for access made pursuant to
39 this article shall identify the requested public record with
40 reasonable specificity.

41 (b) (1) For purposes of this article, receipt of a
42 hand-delivered request occurs on the date of delivery to the
43 public officer having custody of the public record. For
44 purposes of an educational institution, receipt occurs when
45 the request is delivered to the main office of the educational
46 institution.

47 (2) For purposes of this article, receipt of a mailed
48 request occurs on the date of actual receipt by the public
49 officer. A certified mail receipt or similar signed postage
50 receipt shall be prima facie evidence of receipt by the public
51 officer.

52 (3) For purposes of this article, receipt of an
53 electronically received request occurs when the public officer
54 acknowledges receipt of the request in writing to the
55 requester.

56 (c) The public officer shall promptly, but in all cases



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57 not more than 10 business days after the date of receipt,
58 acknowledge receipt of the request.

59 §36-12-44

60 Written requests for public records may be made on a
61 form that is substantially similar to the following:

62 "Requester's contact information:

63 Name: _____

64 Phone number: _____

65 Email address: _____

66 Street address: _____

67 _____

68 _____

69 Agency you are requesting public records from:

70 _____

71 Date of request: _____

72 Records requested: (Be as specific as possible. Requests that
73 are overly broad may take longer to respond to and may
74 increase the fees to cover the administrative cost of
75 searching and copying the requested records.)

76 _____

77 _____

78 _____

79 _____

80 Payment of fees may be required before your request is
81 fulfilled."

82 §36-12-45

83 (a) Upon receipt of a request for a public record as
84 provided in Section 36-12-43, a public officer shall promptly,



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85 but in all cases not more than 20 business days after the date
86 of receipt of the request, make one or more of the following
87 responses to the requester in writing:

88 (1) Respond that access to the requested public records
89 will be provided at a set time, place, and location during
90 regular business hours or at a time, place, and location
91 mutually agreeable to the public officer and the requester.

92 (2) Respond with an estimate of the costs for copying
93 and production of the requested public records.

94 (3) Deny the request in full.

95 (4) Deny the request in part and grant the request in
96 part by providing access to or an estimate of cost for copying
97 and production of the requested public records that are not
98 withheld or that have been redacted, excised, or deleted in
99 order to remove the portion of the record in which an
100 exemption, prohibition, or exception applies.

101 (5) Deny the request, in whole or in part, on the
102 grounds that the public officer is not the custodian of the
103 requested public record and, if known to the public officer,
104 identify the custodian to the requester.

105 (6) Deny the request, in whole or in part, on the
106 grounds that, to the best of the public officer's knowledge,
107 the requested record does not exist within the governmental
108 agency.

109 (b) If the public officer reasonably believes the
110 amount of time and resources needed to comply with the request
111 within the time required by this section will prevent the
112 public officer or his or her staff from meeting their



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113 operational responsibilities, the public officer shall provide
114 the requester the opportunity to limit the scope of the
115 request so that it can be processed in an agreed upon time
116 between the public officer and the requester.

117 (c) If the public officer and the requester agree to
118 the copying and production of the requested public record
119 based on the estimate of cost provided in subdivision (a) (2)
120 or subdivision (a) (4), the public officer shall provide to the
121 requester an estimate of the additional time needed to produce
122 the copy under the agreed upon conditions. The additional time
123 shall not exceed 45 business days after the date of the
124 agreement with the requester, plus an additional 15 business
125 days permitted in order to make a determination whether the
126 requested record is sensitive or is otherwise nonpublic
127 information under applicable law.

128 (d) Any denial of the request, in whole or in part,
129 shall identify the subject matter of the withheld public
130 records and cite the specific reason or reasons for the
131 withholding that are known by the public officer at that time.
132 A public officer may revise the initial reasons for a denial
133 by sending the requester the revised reasons for the denial
134 not more than 30 business days after the initial denial.

135 (e) For purposes of this section, "business day" means
136 a day that the public officer's office is open to the public
137 and conducting normal operations.

138 (f) A public officer shall not be required to create a
139 new public record if the record requested does not already
140 exist.



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141 (g) Failure by a public officer to respond in
142 accordance with this section to a request shall be deemed a
143 denial of the request and shall constitute a violation of this
144 section. The disclosure of nonpublic or sensitive information
145 constitutes a violation of this section if the public officer
146 has made no effort to narrow the scope of the request or
147 otherwise provide for proper disclosure under subsection (b).

148 (h) This article is not intended to and does not affect
149 any protections for sensitive or other nonpublic information
150 provided under applicable law.

151 Section 3. This act shall become effective on October
152 1, 2023, following its passage and approval by the Governor,
153 or its otherwise becoming law.

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156 Senate

157 Read for the first time and referred11-Apr-23
158 to the Senate committee on County
159 and Municipal Government
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161 Read for the second time and placed13-Apr-23
162 on the calendar:
163 0 amendments
164
165 Read for the third time and passed11-May-23
166 as amended
167 Yeas 33
168 Nays 0
169 Abstains 0
170

171
172 Patrick Harris,
173 Secretary.
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