

SB270 ENGROSSED



1 SB270
2 IG5B6WW-2
3 By Senator Orr
4 RFD: County and Municipal Government
5 First Read: 02-Apr-24



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A BILL
TO BE ENTITLED
AN ACT

Relating to public records; to amend Sections 36-12-40 and 36-12-41, Code of Alabama 1975, and to add Sections 36-12-43, 36-12-44, 36-12-45, and 36-12-46 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. Sections 36-12-40 and 36-12-41 of the Code of Alabama 1975, are amended to read as follows:

"§36-12-40

(a) Every citizen has a right to inspect and take a copy of any public ~~writing record~~ of this state, except as otherwise expressly provided by ~~statute~~applicable law.

Provided however, registration and circulation records and information concerning the use of the public, public school, or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that



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29 pertain to his or her child. Notwithstanding the foregoing,
30 records concerning security plans, procedures, assessments,
31 measures, or systems, and any other records relating to, or
32 having an impact upon, the security or safety of persons,
33 structures, facilities, or other infrastructures, including
34 without limitation information concerning critical
35 infrastructure, ~~(as defined at 42 U.S.C. § 5195c(e), as~~
36 ~~amended)~~ and critical energy infrastructure information, ~~(as~~
37 ~~defined at 18 C.F.R. § 388.113(c)(1), as amended)~~ the public
38 disclosure of which could reasonably be expected to be
39 detrimental to the public safety or welfare, and records the
40 disclosure of which would otherwise be detrimental to the best
41 interests of the public shall be exempted from this section.
42 Any public officer who receives a request for records that may
43 appear to relate to critical infrastructure or critical energy
44 infrastructure information, shall notify the owner of such
45 infrastructure in writing of the request and provide the owner
46 an opportunity to comment on the request and on the threats to
47 public safety or welfare that could reasonably be expected
48 from public disclosure ~~on~~ of the records.

49 (b) For purposes of this article, the judicial branch
50 of state government and any office identified in Article VI of
51 the Constitution of Alabama of 2022, are exempted from the
52 requirements of Sections 36-12-43 through 36-12-45."

53 "§36-12-41

54 Every public officer having ~~the~~ custody of a public
55 ~~writing which~~ record that a citizen has a right to inspect ~~is~~
56 ~~bound to give him~~ shall provide him or her, on demand proper



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57 request as provided in this article, with a certified copy of
58 it the public record, on payment of the legal fees therefor a
59 reasonable fee, as further provided in this article, and such
60 copy is admissible as evidence in like cases and with like
61 effect as the original writing."

62 Section 2. Sections 36-12-43, 36-12-44, 36-12-45, and
63 36-12-46 are added to the Code of Alabama 1975, to read as
64 follows:

65 §36-12-43

66 (a) It is the policy of the state to promptly provide
67 citizens with the opportunity to inspect public records and to
68 request a copy, subject to payment of reasonable fees and to
69 applicable legal protections for private, confidential,
70 privileged, and other nonpublic information, and to the
71 interest of the general public in having the business of
72 government carried on efficiently and without undue
73 interference.

74 (b) For purposes of this article, the following terms
75 shall have the following meanings:

76 (1) BUSINESS DAY. A day that the public officer's
77 office is open to the public and conducting normal operations.

78 (2) CITIZEN. A resident who is permanently domiciled in
79 Alabama with an expectation to remain in Alabama as
80 demonstrated by reasonable proof of residency such as, but not
81 limited to, an Alabama driver license or voter registration.

82 (3) PUBLIC OFFICER. A public officer or his or her
83 designee responsible for responding to public records
84 requests.



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85 (4) STANDARD REQUEST. A public records request that
86 seeks one or more specifically and discretely identified
87 public records that the public officer determines would take
88 less than eight hours of staff time to process considering the
89 time needed to identify and retrieve any responsive records
90 and to redact or take other measures to withhold legally
91 protected information. A standard request should require no or
92 minimal clarification by the requester.

93 (5) SUBSTANTIVE RESPONSE. A response to a public
94 records request that sets forth the public officer's ultimate
95 position on the substance of the request. The term includes,
96 but is not limited to, the following, in whole or in part:

97 a. A statement that the public records are provided as
98 attached or enclosed.

99 b. A statement that access to the requested public
100 records will be provided at a set time, place, and location
101 during regular business hours or at a time, place, and
102 location mutually agreeable to the public officer and the
103 requester.

104 c. A statement that the public officer is prepared to
105 provide the requested public records to the requester upon
106 payment of a reasonable, specified fee.

107 d. A statement that denies the request with reasons
108 stated therefor.

109 e. A statement that denies the request on the grounds
110 that the requested public record does not exist within the
111 government agency. If known to the public officer, the public
112 officer may identify the proper custodian or location for the



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113 requested public record.

114 f. A statement that denies the request for failure to
115 substantially complete a standard request form.

116 g. A statement that denies the request for failure to
117 substantially comply with the written procedures established
118 by the public officer for such request.

119 h. A statement that denies the request because the
120 records sought are not public.

121 (6) TIME-INTENSIVE REQUEST. A public records request
122 that the public officer determines would take more than eight
123 hours of staff time to process considering the time needed to
124 identify and retrieve any responsive records and any time
125 needed to redact or take other measures to withhold legally
126 protected information.

127 (c) This article is not intended to, and does not,
128 change or in any way affect any protections for private,
129 confidential, privileged, or other nonpublic information
130 provided under applicable law.

131 §36-12-44

132 (a) A public officer shall respond to a standard
133 request subject to each of the following provisions:

134 (1) The public officer may require the requester to
135 submit his or her request using a standard request form or by
136 following the written procedures for accepting requests for
137 public records established by the public officer.

138 (2) The public officer may require the requester to pay
139 a reasonable fee set by the public officer before the
140 requester may receive any public records. If the public



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141 officer elects to charge a fee, the public officer shall
142 notify the requester of the estimated fee and withhold any
143 public records until receipt of payment. The requester may opt
144 not to pay the fee and thus not receive any substantive
145 response.

146 (3) The public officer shall acknowledge a proper
147 request within 10 days of receiving the request.

148 (4) The public officer shall provide a substantive
149 response fulfilling or denying a proper request within 15
150 business days of acknowledging receipt. Although the public
151 officer may extend this period in 15-business-day increments
152 upon written notice to the requester, the public officer
153 should process a standard request as expeditiously as possible
154 considering the requester's time constraints, the public
155 officer's workload, and the nature of the request.

156 (5) There shall be a rebuttable presumption that a
157 proper standard request has been denied by the public officer
158 if:

159 a. A substantive response is not provided to the
160 standard request within the earlier of 30 business days or 60
161 calendar days following acknowledgment of receipt by the
162 public officer; or

163 b. The public records are not produced within the
164 earlier of 30 business days or 60 calendar days following the
165 payment of the estimated fees to the public officer.

166 (6) There shall be no presumption that a proper
167 standard request has been denied if:

168 a. The public officer has responded in part;



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169 b. The public officer and requester have reached an
170 agreement regarding the time or substance, or both, of the
171 response;

172 c. Good faith negotiations are ongoing between the
173 public officer and the requester; or

174 d. The public officer has reasonably communicated the
175 status of the request to the requester.

176 (b) A public officer shall respond to a proper,
177 time-intensive request subject to each of the following
178 provisions:

179 (1) The public officer shall require the requester to
180 submit his or her request using a standard request form or by
181 following the written procedures for accepting requests for
182 public records established by the public officer.

183 (2) The public officer may require the requester to pay
184 a reasonable fee set by the public officer before providing a
185 substantive response to the requester. The public officer
186 shall notify the requester in advance of any likely fees and
187 shall withhold any substantive response until receipt of
188 payment.

189 (3) The public officer shall acknowledge the request
190 within 10 business days of receiving the request.

191 (4) The public officer shall notify the requester
192 within 15 business days after acknowledging receipt that the
193 request qualifies as a time-intensive request. At that time,
194 the public officer shall notify the requester of any likely
195 fees and allow the requester to withdraw the time-intensive
196 request and submit a new request that is not a time-intensive



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197 request. If the requester elects to proceed with a
198 time-intensive request, the public officer shall provide a
199 substantive response fulfilling or denying the request within
200 45 business days after the requester elected to proceed with
201 his or her time-intensive request. The public officer may
202 extend this period in 45-business-day increments by notifying
203 the requester in writing.

204 (5) At or around the time of designating the request as
205 time-intensive, the public officer shall make a record in a
206 log maintained for keeping track of currently pending
207 time-intensive requests. For each such currently pending
208 request, the log shall identify the name of the requester, the
209 general subject matter of the request, and the date of
210 acknowledgment pursuant to subdivision (3). The log shall be a
211 confidential document that is not subject to disclosure
212 pursuant to this article, provided the log may remain
213 discoverable pursuant to proper discovery methods provided
214 under applicable rules of procedure.

215 (6) There shall be a rebuttable presumption that a
216 proper time-intensive request has been denied by the public
217 officer if:

218 a. A substantive response is not provided within the
219 earlier of 180 business days or 270 calendar days following
220 the requester's election to proceed with a time-intensive
221 request.

222 b. The records are not produced within the earlier of
223 180 business days or 270 calendar days following the payment
224 of the estimated fees to the public officer.



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225 (7) There shall be no presumption that a proper
226 standard request has been denied if:

227 a. The public officer has responded in part;

228 b. The public officer and requester have reached an
229 agreement regarding the time or substance, or both, of the
230 response;

231 c. Good faith negotiations are ongoing between the
232 public officer and the requester; or

233 d. The public officer has reasonably communicated the
234 status of the request to the requester.

235 (c) A request made pursuant to this article must
236 identify the requested public record with reasonable
237 specificity. A public officer shall not be obligated to
238 respond to a public records request that is vague, ambiguous,
239 overly broad, or unreasonable in scope.

240 (d) A public officer shall not be required to create a
241 new public record if the requested record does not already
242 exist.

243 (e) A public officer shall not be required to respond
244 to requests that seek information or other materials that are
245 not public records.

246 (f) A public officer may request reasonable evidence to
247 establish proof of residency.

248 (g) If a public officer responds to a request by
249 seeking clarification or additional information, the timelines
250 established in this section shall be tolled and shall restart
251 once the public officer receives the requested clarification
252 or additional information as if the requester had submitted a



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253 new request. A public officer's decision to seek clarification
254 or additional information with respect to any particular
255 request shall not operate as a waiver of the public officer's
256 right to seek clarification or additional information in
257 response to other, future requests.

258 (h) Nothing in this article shall be construed to
259 prohibit a public officer from processing a public records
260 request in a manner that is less expensive or more prompt from
261 the perspective of the requester.

262 §36-12-45

263 (a) (1) A citizen may request access to a public record
264 by following the written procedures for accepting such
265 requests established by the public officer having custody of
266 the public record. The written procedures may establish any of
267 the following:

268 a. A standard request form for use in submitting a
269 public records request.

270 b. A designee, such as a public records coordinator, to
271 whom a public records request shall be addressed.

272 c. The permissible method or methods of transmitting a
273 public records request.

274 d. Any other policies pertaining to the process for
275 submitting a public records request.

276 (2) The public officer shall make his or her written
277 procedures concerning public records reasonably available to
278 the public.

279 (3) A public officer shall not be obligated to respond
280 to a public records request that is not made pursuant to the



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281 public officer's written procedures.

282 (4) Written procedures need not be adopted as
283 administrative rules pursuant to the Alabama Administrative
284 Procedure Act.

285 (b) In the absence of written procedures to the
286 contrary, each of the following shall apply:

287 (1) A citizen may submit a public records request by
288 delivering the request by hand or by mailing the request to
289 the main office or principal place of business of the public
290 officer having custody of the public record.

291 (2) Receipt of a hand-delivered public records request
292 occurs when the request is received at the public officer's
293 main office or principal place of business. Receipt of a
294 mailed public records request occurs on the date of actual
295 receipt by the public officer. A certified mail receipt or
296 similar signed postage receipt shall be prima facie evidence
297 of receipt by the public officer.

298 (3) The standard request form shall read substantially as
299 follows, provided a public officer may require additional
300 information or modify the order or format in which the
301 information is requested:

302 "Requester's contact information:

303 Name: _____

304 Phone number: _____

305 Email address: _____

306 Street address: _____

307 City: _____

308 State: _____



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309 Zip: _____

310 Agency you are requesting public records from:

311 _____

312 Date of request: _____

313 Records requested: (Be as specific as possible. A
314 public officer is not obligated to respond to a request
315 that is vague, ambiguous, overly broad, or unreasonable
316 in scope, nor is a public officer obligated to respond
317 to a request that seeks records that do not exist or
318 materials that are not public records. Additionally,
319 extensive requests for public records may increase the
320 fees to cover the administrative cost of searching and
321 copying the requested records.)

322 _____

323 _____

324 _____

325 _____

326 Payment of fees may be required before your request is
327 fulfilled.

328 By submitting this request, you certify that you are an
329 Alabama resident with standing to make a request for
330 public records pursuant to Alabama law."

331 §36-12-46

332 Nothing in this article shall be construed to permit
333 any party to a pending or threatened action, suit, or
334 proceeding to obtain information regarding a matter relevant
335 to the pending or threatened action, suit, or proceeding in
336 lieu of the proper discovery methods provided under applicable



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337 rules of procedure.

338 Section 3. This act shall become effective on October

339 1, 2024.

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342 Senate

343 Read for the first time and referred02-Apr-24
344 to the Senate committee on County
345 and Municipal Government
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347 Read for the second time and placed09-Apr-24
348 on the calendar:
349 0 amendments
350
351 Read for the third time and passed18-Apr-24
352 as amended
353 Yeas 29
354 Nays 0
355 Abstains 0
356
357

Patrick Harris,
Secretary.

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