

Answers to Frequently Asked Questions About Open Government

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DISCLAIMER: The following information is current as of October 8, 2021, and does not constitute legal advice.

Georgia's Open Records Act

1. What records are considered public under the Open Records Act?

Georgia's Open Records Act (ORA) applies to all records prepared and maintained or received by local, county, and state government agencies, as well as nonprofits receiving more than one-third of their funds from such an agency.

Public records are broadly defined to include, without limitation:

- Documents
- Papers
- Letters
- Maps
- Books
- Tapes
- Photographs
- Computer-based or -generated information
- Data
- Data fields
- Similar material prepared and maintained or received by an agency.
- Emails

The ORA also covers records prepared and maintained or received by a private person or entity in the performance of a service on behalf of a government agency. Such documents are also public if they have been transferred to a private person or entity by a government agency, either for storage or future governmental use.¹

¹ O.C.G.A. § 50-18-70 (b)(1) & (2).

2. Does a letter or form submitted to request a public record also become a public record?

Yes, the broad definition of “public record” includes any document “prepared and maintained *or received* by an agency.”² This would include a public records request received by an agency.

3. Are students’ school records open to the public?

No. The ORA protects from disclosure student records that are covered by the Family Educational Rights and Privacy Act (FERPA).³ FERPA is a federal law designed to give students and parents of minor children control over access to their education records. FERPA defines “education records” to include “records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution.”⁴ Disclosure of such records without written consent from the student(s) they pertain to, or the minor student(s)’ parent(s), constitutes a FERPA violation, which could result in the disclosing school losing its federal funding.⁵ However, it is worth noting that, to date, no school has ever lost federal funding due to FERPA-related violations. Nonetheless, the ORA permits schools to withhold students’ education records that are covered by FERPA.

While students’ education records are not open to the public, school records that do not contain student-specific information, such as school policies and procedures, curriculum documents, contracts with vendors, and many other documents in a school’s possession remain subject to public disclosure under the ORA.

4. Does my local school board have to share data used to formulate policies related to COVID-19?

Yes, as long as the data was prepared and maintained or received by the school board and is not exempt from production under one of the exemptions to the ORA (O.C.G.A. § 50-18-72) or under other state or federal privacy laws such as FERPA, discussed above, or the Health Insurance Portability and Accountability Act (HIPAA). Note that the ORA exempts from disclosure medical records and individualized medical information.⁶

While the ORA defines “public record” to include “data,” agencies—including school boards—are not required to generate or create data in response to a records request. Nor are they required to produce data that is in someone else’s possession that the school board had access to but did not physically receive. In other words, they are only required to produce data that already

² O.C.G.A. § 50-18-70(2).

³ O.C.G.A. § 50-18-72(a)(37)

⁴ 20 U.S.C. § 1232g(a)(4)(A).

⁵ *Joseph v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 20-cv-502, 2020 WL 6494202 (N.D. Ga. May 8, 2020).

⁶ O.C.G.A. § 50-18-72(a)(2) & (20)

exists and that is currently in their possession. This includes producing computer-stored data that is accessible to the agency by giving common computer commands.⁷

5. Are juvenile criminal records open to the public?

No. Juvenile criminal records are generally protected from public disclosure, not by the ORA, but by a separate statute.⁸ In certain circumstances, limited parties may be permitted to inspect juvenile criminal records. These include:

- a juvenile court judge before whom the child is appearing;
- the attorney for a party to the juvenile court proceedings, but only with the consent of the court;
- officers of public institutions or agencies to whom the child is committed;
- law enforcement officers of Georgia, the United States, or any other jurisdiction when necessary for the discharge of their official duties;
- a court in which the child is convicted of a criminal offense, for the purpose of a presentence report or other dispositional proceeding;
- officials of penal institutions and other penal facilities to which the child is committed; or
- a parole board in considering the child's parole or discharge or in exercising supervision over the child.

These situations are narrow, however, so juvenile criminal records generally remain closed to the public for inspection.

6. How can I use public records to find out about crime in my community?

Many police records are subject to the ORA. This includes initial incident reports and initial arrest reports, even while the investigation or prosecution of the incident is still pending.⁹ Such records can be obtained through a written request to the applicable local, county, or state law enforcement agency. For further information about public access to law enforcement records, see *The Blue Book* at <https://gfaf.org/resources/the-blue-book/>.

Additionally, the Georgia Department of Corrections maintains records of all currently and previously incarcerated offenders at:

<http://www.dcor.state.ga.us/GDC/OffenderQuery/jsp/OffQryForm.jsp>.

The Georgia state sex offender registry is maintained by Georgia Board of Investigation, and is available at: http://state.sor.gbi.ga.gov/Sort_Public/.

⁷ O.C.G.A. § 50-18-71(f).

⁸ O.C.G.A. § 15-11-708(c).

⁹ O.C.G.A. 50-18-72(a)(4).

7. What can I do to try to get court documents unsealed?

In Georgia state courts, “there is a public right of access to court records, unless such access is restricted either by law or by the procedures set forth in Uniform Superior Court Rule 21.” Georgia superior courts “may restrict or prohibit access to court records only if they do so in compliance with the requirements of Rule 21.”¹⁰ Under this rule, records may be sealed following a motion from either party in a case or by the court itself. After a hearing on the motion, sealing is only granted when the court finds that the harm to a person’s privacy clearly outweighs the public interest in the records.¹¹ The party seeking to seal records has the responsibility to show that the privacy interest outweighs the public-access interest.

Unsealing court documents involves an amendment of the court order that sealed the records. “[A]n order limiting access may be reviewed and amended . . . at any time on [the court’s] own motion or upon the motion of any person for good cause.”¹² This provision makes clear that review of an order to seal can be brought by any party interested in gaining access to sealed records, and the review process will typically involve a hearing in which the courts will re-weigh the public interest and privacy interests of the concerned parties.¹³

A recommended first step in attempting to unseal court records is to write to the attorneys for all parties in the case, asking for an explanation of why the records were sealed and requesting that the parties consent to a request to the court to unseal them. The letter should point out any failure to follow the procedures for sealing required by Uniform Superior Court Rule 21 (if the case is in Georgia state court) or to follow the local federal court rules or individual judge’s rules for sealing (if the case is in federal court). In some jurisdictions outside of Georgia, reporters challenging sealed records have also had success [writing directly to the judge](#), requesting that the records be unsealed. The attorneys for all parties should be copied on any such letter to the court to reduce the chance of the court considering it an improper *ex parte* communication.

If the letter-writing approach is unsuccessful, the next step in attempting to unseal court records would be to file a motion to intervene in the case and to formally move to unseal the records. Again, in Georgia state court, the party seeking to limit access to court records has the burden of showing that the strength of the alleged privacy interests overcome the “presumption that all court records are to be open.”¹⁴

In the federal court system, the standard for sealing documents is much the same. Federal courts in the Eleventh Circuit, which includes Georgia, Alabama, and Florida, “balanc[e] the public interest in accessing court documents against a party’s interest in keeping the information confidential.”¹⁵ Courts will weigh whether access would harm a person’s privacy, the likelihood

¹⁰ *In re Atlanta J.-Const.*, 271 Ga. 436, 437 (1999).

¹¹ Unif. Super. Ct. R. 21.2.

¹² Unif. Super. Ct. R. 21.5.

¹³ *Savannah Coll. of Art & Design, Inc., v. Sch. of Visual Arts, Inc.*, 270 Ga. 791, 792–93 (1999).

¹⁴ *Id.* at 792.

¹⁵ *Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007).

of harm by public disclosure, whether the information relates to public officials or public concerns, and whether alternatives to sealing records are available.¹⁶ Unsealing records in federal court also involves filing a motion to unseal, after which the court will usually conduct a hearing on the alleged privacy interests.

Georgia's Open Meetings Act

1. Are local governments required to allow public comment during open meetings?

No. The Open Meetings Act (OMA) does not require a public comment period during an open meeting. The OMA only requires that members of the public have contemporaneous access to observe the meeting. The OMA does not require that members of the public be given the opportunity to speak.

While the OMA does not require public comment, many cities and counties allow for public comment at certain open meetings like city council and school board meetings. Allowing for public comment is consistent with the spirit of citizen participation in democratic government.

Importantly, once an agency has opened a public comment period at meetings, it cannot close down or eliminate public comment simply because the government officials at the meeting dislike a particular opinion or viewpoint that is being expressed. Government regulation of speech intended to silence expression of a particular viewpoint violates the First Amendment.¹⁷

2. What is an executive session and when can it be used?

The OMA defines “executive session” as a portion of a meeting lawfully closed to the public.¹⁸

The purpose behind executive sessions is to protect confidential information and foster candid and robust discourse between government officials on matters they might be wary of speaking about in public view.

The permitted uses of executive sessions are set forth in O.C.G.A. § 50-14-3 (b). They include discussions involving matters covered by attorney-client privilege (like lawsuits or settlements of legal claims), discussions about employment matters concerning public officers or employees (like whether to hire or fire people), discussions about acquisition or disposal of property and real estate, and fiscal investments of public retirement systems. Executive sessions also protect agency discussions concerning records that are exempt, in whole or in part, from public disclosure under the Open Records Act and where there is no way for the agency to publicly discuss the exempted records without disclosing the ORA-protected portions.

¹⁶ *Id.*

¹⁷ *Rosenberger v. Rectors and Visitors of the Univ. of Virginia*, 515 U.S. 819 (1995).

¹⁸ O.C.G.A. § 50-14-1(a)(2).

The OMA sets forth the following procedures that must take place in order to legitimately call an executive session:

- a majority vote of the quorum of agency members present at the meeting is required to enter executive session;
- the publicly available meeting minutes shall reflect the names of the members present, the names of those voting to enter executive session, and the reason for entering executive session;
- minutes of the executive session must be recorded, but will not be made publicly available; and
- the parts of the meeting that occur outside of an executive session must still be open to the public, with minutes of those parts recorded and made available for public inspection.

3. Can I be kicked out of a public meeting?

No. Not unless you are disrupting the meeting.

The OMA “was enacted in the public interest to protect the public . . . from ‘closed door’ politics and the potential abuse of individuals and the misuse of power such policies entail. Therefore, the Act must be broadly construed to affect its remedial and protective purposes.”¹⁹ Thus, there is a broad presumption in favor of openness when interpreting the OMA.

However, “[t]here is a significant governmental interest in conducting orderly, efficient meetings of public bodies.”²⁰ Therefore, attendees may be removed from a meeting if removal is in the interests of public order and allowing for the proper functioning of government.²¹ Examples of disruptive behavior that may warrant removal from a meeting could include, for example, repeatedly speaking outside of a public comment period, repeatedly interrupting or speaking/shouting over others who are speaking, engaging in physically threatening conduct toward other attendees, or otherwise preventing the meeting from being able to proceed.²² However, any removal of attendees from a meeting must be “narrowly tailored to accomplish the government’s interest in continuing the meeting.”²³

Notably, making a video or sound recording of a public meeting is explicitly authorized by the OMA and does not provide a basis for removing the person making the recording from the meeting.²⁴

¹⁹ *Atlanta J. v. Hill*, 257 Ga. 398, 399 (1987).

²⁰ *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp. Rels. Comm.*, 429 U.S. 167, 175 n.8 (1976).

²¹ *Harris v. City of Valdosta, Ga.*, 616 F. Supp. 2d 1310, 1324 (M.D. Ga. 2009).

²² See *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990); *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989).

²³ *Harris*, 616 F. Supp. 2d at 1324.

²⁴ O.C.G.A. § 50-14-1(b)(3).

Finally, a Georgia law making disruption of public meetings an independent unlawful offense has been found unconstitutional.²⁵ But other charges, like disorderly conduct, could lawfully be brought against an attendee who disrupts a public meeting.²⁶

4. If my city has live-stream technology, is the city council required to live-stream its in-person meetings?

Under the OMA, city council meetings are required to be open to the public, meaning the public must have contemporaneous access to observe the meeting as it is occurring. However, while many public agencies across Georgia provide public live-streaming of their meetings (particularly during the COVID-19 pandemic), there is no requirement under the OMA for agencies to do so, if the meetings are open to the public via in-person attendance.

However, if your local public agency has invested large sums of money into livestream technology and is not utilizing it, you have a First Amendment right to petition the agency to use this technology funded by public tax dollars.

Note that if the meeting is being conducted remotely via telephone or an electronic platform such as Zoom, the public must still have contemporaneous access to observe the meeting as it is occurring. This can be achieved via a dial-in telephone number or a publicly accessible Zoom link.²⁷

5. My city's mayor has formed an anti-violence advisory group. Are the group's meetings required to be open to the public?

Probably yes, but to date there is not a test case to know for sure.

Atlanta Journal v. Hill, decided by the Georgia Supreme Court in 1987, was previously the controlling case on advisory committees. In that case, the court held that the OMA does not apply to advisory groups or councils that have no independent policy-making authority but only serve to provide recommendations or feedback to policy-making officials. Thus, under *Atlanta Journal*, an anti-violence advisory committee created by a mayor would not be subject to the same OMA requirements as committees that have the authority to make governing decisions.

However, the OMA was amended in 2012 to broaden the language describing what kinds of meetings must be open to the public. At the time of the *Atlanta Journal* case, the OMA applied to meetings of “any agency at which proposed official action is to be discussed or at which official action is to be taken.” The 2012 amendments added “any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.”

²⁵ *State v. Fielden*, 280 Ga. 444, 448 (2006).

²⁶ *Freeman v. State*, 302 Ga. 181, 184–85 (2017).

²⁷ *Claxton Enterprise v. Evans County Bd. of Com'rs*, 249 Ga.App. 870, 875 (2001) (holding that virtual public meetings must comply with the Open Meetings Act).

While there has yet to be a court case that directly applies this changed language of the OMA, it seems, on its face, that the revised language would likely encompass an advisory committee meeting.

Practical Applications of Georgia’s Open Records and Open Meetings Acts

1. Are individual contributions to political campaigns considered public records subject to the Open Records Act?

No. Political parties are not government agencies as defined under Georgia’s Open Records Act (ORA), and they are thus not subject to the same obligations as government agencies to respond to open records requests.²⁸ They operate as private entities, primarily through the corporate form, and exist outside the sphere of government operations.

Political campaigns, however, are subject to disclosure requirements under federal and state law, which impose reporting requirements for certain levels of campaign contributions. These reporting requirements apply to both individual contributions and contributions from other sources, like Political Action Committees. For example, under Georgia’s campaign finance laws, a political campaign is required to file disclosure reports for every individual contributor who gives over \$100.²⁹ These contribution reports are filed with the municipality or with the county election superintendent where the political race is taking place, and also with the Georgia Government Transparency and Campaign Finance Commission. Once filed, these contribution reports are *then* subject to disclosure pursuant to an ORA request.

2. Can an elected official in my city block me from seeing or commenting on their Facebook page?

It depends. If the elected official uses the Facebook page to communicate with their constituents and the general public about their official duties and activities, and they also allow the general public to interact with the page by posting comments, then they cannot block you from interacting on the page based on dislike or disagreement with a viewpoint you have posted. Blocking you from seeing the page or posting further comments on the page would be viewpoint-based regulation of your private speech by a government official, which violates the First Amendment.³⁰

However, if the official uses the Facebook page for personal communication and correspondence, and not in their official capacity as a public official, then they are free to block you.

²⁸ O.C.G.A. § 50-14-1(a)(1).

²⁹ O.C.G.A. § 21-5-34 (b)(1)(B).

³⁰ *Attwood v. Clemons*, 818 Fed.Appx. 863, 867-868 (11th Cir. 2020); *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019).

The line between an official-capacity Facebook page and a personal Facebook page can be blurry. In such cases, courts conduct a fact-specific analysis taking into account such factors as:

- whether the general public has access to the page;
- whether the page is used to promote official events and/or inform constituents or members of the public about activities related to the public official's office;
- whether the page is used to converse with constituents/members of the public;
- whether the page includes markers of official status, such as references to the official's title or photographs of the official engaged in official conduct (e.g., delivering official addresses, meeting with other officials, or attending official events); and
- how the government official who operates the page, other government officials, and members of the public describe, regard, and treat the page.

Note, however, that campaign and election pages are generally considered to be private, for purposes of the First Amendment. This is true even if the election candidate already holds public office. Political party pages are also private. This means it is much harder to argue that your First Amendment rights have been violated if you are blocked from a campaign or election social media page, or from a political party page.

3. How do I use Georgia's open government laws to learn more about real estate and business developments in my communities?

To learn about real estate and business developments in your community, you can use Georgia's Open Records Act (ORA) to request proposals, bids, contracts, deeds, permits, and zoning maps related to a project. Under the ORA, you can also make written requests to private companies or entities that have been contracted by your city or county to perform services related to a government project.

Before submitting an ORA request, it is recommended to first check county land records offices, and city clerk's and/or registrar's offices, to see what documents are already available for public inspection either in hard copy or online. For instance, the ORA requires that "[a]ny computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected."³¹ Thus, for counties with a computerized index for deed records, the index must be available to the public, even without an ORA request. For counties without a computerized index, deeds, liens, and records related to land are typically available to the public at the county clerk's office.

Additionally, under Georgia's Open Meetings Act (OMA), state and local government agencies and authorities must conduct their business in open and provide the public reasonable notice of all meetings.³² This means you can further find out information by attending meetings of the public bodies responsible for coordinating and approving new projects and developments,

³¹ O.C.G.A. § 50-18-71(i).

³² O.C.G.A. § 50-14-1.

such as zoning boards, planning commissions, and regional development authorities. Government agencies must also post their agenda before each open meeting, and make summaries and meeting minutes publicly available after the meeting. If these documents are not available online, you can make a written request to inspect or receive copies of meeting agendas, summaries, and minutes under the ORA.

Keep in mind that discussions about purchase or lease of land, such as for a newly planned landfill for example, may lawfully be conducted in executive session, which is not open to the public. Nor are minutes from executive sessions open for public inspection. However, the agency's governing body must approve the contract for lease or purchase in a public vote.³³ And the final lease or purchase agreement is a public record under the ORA.

Other ORA exemptions that you may encounter when seeking information about real estate and business developments include, without limitation:

- trade secrets.³⁴
- sealed bids or sealed proposals and detailed cost estimates related thereto, which become publicly available only after the final award of the contract is made, or if the project is terminated or abandoned, or if the agency possessing the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.³⁵
- documents maintained by any agency pertaining to an "economic development project,"³⁶ which become publicly available only after the economic development project is secured by a binding commitment or the project is terminated.³⁷

Despite these exemptions, the ORA and OMA are still powerful tools for learning about new developments in your community.

4. Are my individual income tax records public?

No. ORA exempts from disclosure "tax matters or tax information that is confidential under state or federal law."³⁸ This exemption is echoed in another section of the ORA, which states that "it is unlawful . . . [for officials to] divulge . . . in any manner the amount of income or any particulars set forth or disclosed in any report or return required under the law of this state or any return or return information required by the Internal Revenue Code."³⁹ These statutes make clear that individual income tax records and personal financial documents are protected from

³³ O.C.G.A. § 50-14-3 (b).

³⁴ O.C.G.A. § 50-18-72(a)(34).

³⁵ O.C.G.A. § 50-18-72(a)(10).

³⁶ "Economic development project" means a plan or proposal to locate a business or expand a business that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business. O.C.G.A. § 50-18-72(a)(46).

³⁷ O.C.G.A. 50-18-72(a)(46).

³⁸ O.C.G.A. § 50-18-72(a)(43)

³⁹ O.C.G.A. § 48-7-60.

public disclosure in the vast majority of situations. Property tax records, however, are public records.

5. Is my voting record public?

Some information related to your voting record can be obtained from the Georgia Secretary of State, like your address, race, gender, and the last time you voted. But which candidate(s) you voted for is private. “It is basic in the American democratic process of elections that an individual voter’s right to privacy as to how he cast his ballot is inviolate. It is improper and erroneous for courts to engage in presumptions of any kind in that exclusive area of privacy.”⁴⁰ Vital information contained in your voting records like your birth date, phone number, and Social Security number are also not public.

6. Can I find out how much my local officials get paid?

Yes. Public employees’ salaries are subject to public disclosure. However, the ORA contains an exemption for financial data “other than compensation by a government agency.”⁴¹

The Act’s definition of “public employee” includes employees of “[a]ny county or municipality or its agencies, departments, or commissions.”⁴² State employees also covered under O.C.G.A. § 50-6-27.

7. How can I find out about the levels of air and water pollution in my community?

Georgia’s Environmental Protection Division (EPD) oversees all records and permits for water and air protection in Georgia. Specifically, the EPD’s Watershed Protection Branch provides permits for local communities, businesses, and farmers for all surface water and groundwater withdrawals. The Air Pollution wing of the EPD monitors air quality levels and air pollution for all counties in Georgia and maintains this data on their website at <https://airgeorgia.org/>. Documents submitted to the EPD by public and private entities are available through ORA requests to the Georgia Environmental Protection Division. More information can be found on the EPD website at <https://epd.georgia.gov/>.

8. Are cast ballots public records?

Under Georgia’s new “Election Integrity Law”—SB 202—passed in March of 2021, a pilot program has been established to test the release of cast ballots to the public. The language of SB 202 includes a change to the ORA, stating that “[s]canned ballot images created by a voting system authorized by Chapter 2 of Title 21 shall be public records subject to disclosure.” However, this only includes images of the votes cast, not the voters’ individual identifying information.

⁴⁰ *Miller v. Kilpatrick*, 140 Ga. App. 193, 194 (1976).

⁴¹ O.C.G.A. § 50-18-72(a)(21)

⁴² O.C.G.A. § 50-8-72(a)(21)(B)

9. Is an autopsy report a public record, even if it relates to a death that is the subject of a pending criminal investigation?

In Georgia, investigations conducted by the coroner are subject to the Open Records Act and the Open Meetings Act.⁴³ This includes both autopsies and a coroner's inquest.⁴⁴ The terms "coroner's inquest" and "autopsy report" are used interchangeably in Georgia law, with inquests being scheduled and open to the public under the OMA.⁴⁵ Because coroners do not constitute a "law enforcement agency," but merely serve an advisory role to law enforcement,⁴⁶ coroner reports are also available to the public under the ORA.

However, autopsy photographs or images may not be released without written permission of the next of kin.⁴⁷ In matters of public interest, however, superior courts may order the disclosure of these photographs.⁴⁸

⁴³ *Kilgore v. R.W. Page Corporation*, 259 Ga. 556 (1989).

⁴⁴ *Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991) (further ruling specifically on inquests themselves).

⁴⁵ O.C.G.A. § 45-16-27 (referring to coroner investigations as "inquests" and defining them through statute).

⁴⁶ 261 Ga. 410 (1991).

⁴⁷ O.C.G.A. § 45-16-27(d).

⁴⁸ *Id.*