

A.C.A. § 25-19-105

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

AR - Arkansas Code Annotated > Title 25 State Government > Chapter 19 Freedom of Information Act of 1967

25-19-105. Examination and copying of public records.

(a)

(1)

(A) Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying, including without limitation copying through image capture, including still and moving photography and video and digital recording, by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.

(B) However, access to inspect and copy, including without limitation copying through image capture, including still and moving photography and video and digital recording, public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

(2)

(A) A citizen may make a request to the custodian to inspect, copy, including without limitation through image capture, including still and moving photography and video and digital recording, or receive copies of public records.

(B) The request may be made in person, by telephone, by mail, by facsimile transmission, by electronic mail, or by other electronic means provided by the custodian.

(C) The request shall be sufficiently specific to enable the custodian to locate the records with reasonable effort.

(3) A custodian shall respond as follows in writing within the time period required under this section to a written request for public records:

(A) If no records exist that are responsive to the request, the custodian shall respond that no records exist;

(B) If any responsive records that exist are subject to exemptions under this chapter or other law, the custodian shall respond and identify the applicable exemptions; and

(C) If the custodian lacks administrative control over any responsive records that may exist, the custodian shall respond and identify the appropriate custodian to direct the request to, if known or readily ascertainable.

(4) A custodian's response under subdivision (a)(3) of this section may be delivered by electronic mail.

(5) If a custodian knowingly fails to respond as required under subdivision (a)(3) of this section, he or she shall be subject to the penalties in § 25-19-104 for a violation of this chapter.

(6) The requirements of this subsection do not affect the obligation of a custodian to immediately provide to the requestor any responsive records not in active use or storage.

(b) It is the specific intent of this section that the following shall not be deemed to be made open to the public under the provisions of this chapter:

(1) State income tax records;

(2) Medical records, adoption records, and education records as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, unless their disclosure is consistent with the provisions of that act;

(3) The site files and records maintained by the Arkansas Historic Preservation Program and the Arkansas Archeological Survey;

(4) Grand jury minutes;

(5) Unpublished drafts of judicial or quasi-judicial opinions and decisions;

(6) Undisclosed investigations by law enforcement agencies of suspected criminal activity;

(7) Unpublished memoranda, working papers, and correspondence of the Governor, members of the General Assembly, Supreme Court Justices, Court of Appeals Judges, and the Attorney General;

(8) Documents that are protected from disclosure by order or rule of court;

(9)

(A) Files that if disclosed would give advantage to competitors or bidders; and

(B)

(i) Records maintained by the Arkansas Economic Development Commission related to any business entity's planning, site location, expansion, operations, or product development and marketing, unless approval for release of those records is granted by the business entity.

(ii) However, this exemption shall not be applicable to any records of expenditures or grants made or administered by the commission and otherwise disclosable under the provisions of this chapter;

(10)

(A) The identities of law enforcement officers currently working undercover with their agencies and identified in the Arkansas Minimum Standards Office as undercover officers.

(B) Records of the number of undercover officers and agency lists are not exempt from this chapter;

(11) Records containing measures, procedures, instructions, or related data used to cause a computer or a computer system or network, including telecommunication networks or

applications thereon, to perform security functions, including, but not limited to, passwords, personal identification numbers, transaction authorization mechanisms, and other means of preventing access to computers, computer systems or networks, or any data residing therein;

(12) Personnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

(13) Personal contact information, including without limitation home or mobile telephone numbers, personal email addresses, and home addresses of nonelected state employees, nonelected municipal employees, nonelected school employees, and nonelected county employees contained in employer records, except that the custodian of the records shall verify an employee's city or county of residence or address on record upon request;

(14) Materials, information, examinations, and answers to examinations utilized by boards and commissions for purposes of testing applicants for licensure by state boards or commissions;

(15) Military service discharge records or DD Form 214, the Certificate of Release or Discharge from Active Duty of the United States Department of Defense, filed with the county recorder as provided under § 14-2-102, for veterans discharged from service less than seventy (70) years from the current date;

(16) Vulnerability assessments submitted by a public water system on or before June 30, 2004, to the Administrator of the United States Environmental Protection Agency for a period of ten (10) years from the date of submission;

(17) [Repealed.]

(18)

(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information relating to security for any public water system or municipally owned utility system.

(B) The records under subdivision (b)(18)(A) of this section include:

(i) Risk and vulnerability assessments;

(ii) Plans and proposals for preventing and mitigating security risks;

(iii) Emergency response and recovery records;

(iv) Security plans and procedures;

(v) Plans and related information for generation, transmission, and distribution systems; and

(vi) Other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect the public water system or municipally owned utility system;

(19) Records pertaining to the issuance, renewal, expiration, suspension, or revocation of a license to carry a concealed handgun, or a present or past licensee under § 5-73-301 et seq., including without limitation all records provided to or obtained by a local, state, or federal government or their officials, agents, or employees in the investigation of an applicant, licensee, or past licensee, and all records pertaining to a criminal or health history check conducted on the applicant, licensee, or past licensee except that:

(A) Information or other records regarding an applicant, licensee, or past licensee may be released to a law enforcement agency to assist in a criminal investigation or prosecution or to determine the validity of or eligibility for a license; and

(B) The name of an applicant, licensee, or past licensee may be released as contained in investigative or arrest reports of law enforcement that are subject to release as public records;

(20)

(A) Except as provided in subdivision (b)(20)(B) of this section, personal information of current and former public water system customers and municipally owned utility system customers, including without limitation:

- (i)** Home and mobile telephone numbers;
- (ii)** Personal email addresses;
- (iii)** Home and business addressees; and
- (iv)** Customer usage data.

(B) Personal information of a current or former water system customer or municipally owned utility system customer may be disclosed to:

- (i)** The current or former water system customer, who may receive his or her own information;
- (ii)** A person who serves as the attorney, guardian, or other representative of the current or former water system customer, who may receive the information of his or her client, ward, or principal;
- (iii)** A tenant of the current or former water system customer or municipally owned utility system customer, who may receive notice of pending termination of service;
- (iv)** A federal or state office or agency for the purpose of participating in research being conducted by such federal or state office or agency, if the federal or state office or agency agrees to prohibit disclosure of the personal information;
- (v)** For the purpose of facilitating a shared billing arrangement, a county, municipality, improvement district, urban service district, public utility, public facilities board, or public water authority that provides or provided a service to the current or former water system customer or municipally owned utility system customer; or
- (vi)** An agent or vendor of the water system or municipally owned utility system that provides a billing or administrative service to the water system or municipally owned utility system provided that the agent or vendor and the water system or municipally owned utility system enter an agreement that prohibits disclosure by the agent or vendor of the water system or municipally owned utility system of the personal information of a current or former water system customer or municipally owned utility system customer to any other person;

(21) Electronic data information maintained by a disaster recovery system;

(22) The date of birth, home address, email address, phone number, and other contact information from county or municipal parks and recreation department records of a person who was under eighteen (18) years of age at the time of the request made under this section;

(23)

(A) Information related to taxes collected by particular entities under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq.

(B) However, this exemption does not apply to information or other records regarding the total taxes collected under § 26-74-501 et seq.; the Advertising and Promotion Commission Act, § 26-75-601 et seq.; and § 26-75-701 et seq. in the county or municipality as a whole;

(24)

(A) Undisclosed and ongoing investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division.

(B) Completed investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division or investigations by the Alcoholic Beverage Control Board, Alcoholic Beverage Control Division, or Alcoholic Beverage Control Enforcement Division that have been provided to the person or entity under investigation are subject to disclosure under this section;

(25)

(A) When the custodian is a governmental entity that has knowledge of the individual's assistance as described in this subdivision (b)(25)(A), information that could reasonably be used to identify an individual who is assisting or has assisted a governmental entity in one (1) or more investigations, whether open or closed, of matters that are criminal in nature, if disclosure of the individual's identity could reasonably be expected to endanger the life or physical safety of the individual or a member of the individual's family within the first degree of consanguinity and:

- (i) The individual is a confidential informant;
- (ii) The individual is a confidential source; or
- (iii) The individual's assistance is or was provided under the assurance of confidentiality.

(B) As used in this subdivision (b)(25), "information that could reasonably be used to identify an individual" includes the following:

- (i) The individual's name;
- (ii) The individual's date of birth;
- (iii) A physical description of the individual that could reasonably be used to identify him or her;
- (iv) The individual's Social Security number, driver's license number, or other government-issued number specific to him or her;
- (v) The individual's work or personal contact information; and
- (vi) Any other information about the individual that could reasonably be used to identify the individual;

(26)

(A) Records, including analyses, investigations, studies, reports, recommendations, requests for proposals, drawings, diagrams, blueprints, and plans containing information

relating to security for any medical marijuana cultivation facility, marijuana dispensary, or marijuana laboratory processor.

(B) The records under subdivision (b)(26)(A) of this section include:

- (i)** Risk and vulnerability assessments;
- (ii)** Plans and proposals for preventing and mitigating security risks;
- (iii)** Emergency response and recovery records;
- (iv)** Security plans and procedures;
- (v)** Plans and related information for generation, transmission, and distribution systems; and
- (vi)** Other information that, if disclosed, would jeopardize or compromise efforts to secure and protect the security of a medical marijuana cultivation facility, marijuana dispensary, or marijuana laboratory processor;

(27)

(A) Ballots, other than sample ballots, unless otherwise ordered by a court of law.

(B) Subdivision (b)(27)(A) of this section does not apply to a poll watcher during an election, who shall be allowed to inspect a voter statement and ballot while ensuring the secrecy of the vote is maintained and subject to reasonable restrictions prescribed by the State Board of Election Commissioners; and

(28) Records that reflect the planning or provision of security services provided to the:

(A) Governor; or

(B) Lieutenant Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State, Commissioner of State Lands, members of the General Assembly, Justices of the Supreme Court, or Judges of the Court of Appeals.

(c)

(1) Notwithstanding subdivision (b)(12) of this section, all employee evaluation or job performance records, including preliminary notes and other materials, shall be open to public inspection only upon final administrative resolution of any suspension or termination proceeding at which the records form a basis for the decision to suspend or terminate the employee and if there is a compelling public interest in their disclosure.

(2) Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person's designated representative.

(3)

(A) Except as stated under subdivision (c)(4) of this section, upon receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within twenty-four (24) hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision.

(B)

(i) If the subject of the records cannot be contacted in person or by telephone within the twenty-four-hour period, the custodian shall send written notice via overnight mail

to the subject of the records at his or her last known address. Either the custodian, requester, or the subject of the records may, before the close of the Attorney General's office the following business day, seek an opinion from the Attorney General, who, within three (3) working days of receipt of the request, shall issue an opinion stating whether the decision is consistent with this chapter.

(ii) In the event of a review by the Attorney General, the custodian shall not disclose the records until the Attorney General has issued his or her opinion.

(C) However, nothing in this subsection shall be construed to prevent the requester or the subject of the records from seeking judicial review of the custodian's decision or the decision of the Attorney General.

(4) If a request for public records seeks only the gross salary of a public employee or a set of public employees, then the:

(A) Records custodian is not required to notify the public employee or set of public employees before disclosing the gross salary amount; and

(B) Public employee whose gross salary is the subject of the request for public records is not entitled to seek an opinion from the Attorney General under subdivision (c)(3)(B) of this section.

(d)

(1) Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy, including without limitation copying through image capture, including still and moving photography and video and digital recording, those records shall not be denied to any citizen.

(2)

(A) Upon request and payment of a fee as provided in subdivision (d)(3) of this section, the custodian shall furnish copies of public records if the custodian has the necessary duplicating equipment.

(B) A citizen may request a copy of a public record in any medium in which the record is readily available or in any format to which it is readily convertible with the custodian's existing software.

(C) A custodian is not required to compile information or create a record in response to a request made under this section.

(3)

(A)

(i) Except as provided in § 25-19-109 or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

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

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

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

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

(B) The custodian shall provide an itemized breakdown of charges under subdivision (d)(3)(A) of this section.

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

(f)

(1) No request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.

(2) Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.

(3) The amount of information deleted shall be indicated on the released portion of the record and, if technically feasible, at the place in the record where the deletion was made.

(4) If it is necessary to separate exempt from nonexempt information in order to permit a citizen to inspect, copy, including without limitation copying through image capture, including still and moving photography and video and digital recording, or obtain copies of public records, the custodian shall bear the cost of the separation.

(g) Any computer hardware or software acquired by an entity subject to § 25-19-103(7)(A) after July 1, 2001, shall be in full compliance with the requirements of this section and shall not impede public access to records in electronic form.

(h) Notwithstanding any Arkansas law to the contrary, at the conclusion of any investigation conducted by a state agency in pursuit of civil penalties against the subject of the investigation, any settlement agreement entered into by a state agency shall be deemed a public document for the purposes of this chapter. However, the provisions of this subsection shall not apply to any investigation or settlement agreement involving any state tax covered by the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History

Acts 1967, No. 93, § 4; 1977, No. 652, § 2; A.S.A. 1947, § 12-2804; Acts 1987, No. 49, § 1; 1989 (3rd Ex. Sess.), No. 8, § 1; 1993, No. 895, § 1; 1997, No. 540, § 52; 1997, No. 873, § 1; 1997, No. 1335, § 1; 1999, No. 1093, § 1; 2001, No. 1259, § 1; 2001, No. 1336, § 1; 2001, No. 1653, § 2; 2003, No. 213, § 1; 2003, No. 275, § 2; 2003, No. 763, § 2; 2003, No. 1214, § 1; 2005, No. 259, § 2; 2005, No. 2003, § 1; 2007, No. 268, § 2; 2007, No. 726, §§ 1, 2; 2007, No. 998, § 2; 2009, No. 631, § 2; 2009, No. 1291, § 1; 2011, No. 99, § 2; 2011, No. 168, § 1; 2013, No. 145, § 1; 2013, No. 235, § 2; 2013, No. 411, § 1; 2015, No. 186, § 3; 2015, No. 881, § 2; 2015, No. 1015, § 1; 2015, No. 1102, § 1; 2017, No. 711, § 1; 2019, No.

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392, § 6; 2019, No. 568, § 1; 2019, No. 910, § 3585; 2019, No. 1012, § 1; 2019, No. 1034, § 1; 2021, No. 310, §§ 2-5; 2021, No. 658, § 1; 2021, No. 727, § 1; 2023, No. 36, § 1; 2023, No. 879, §§ 1, 2; 2023 (1st Ex. Sess.), No. 7, § 3.

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