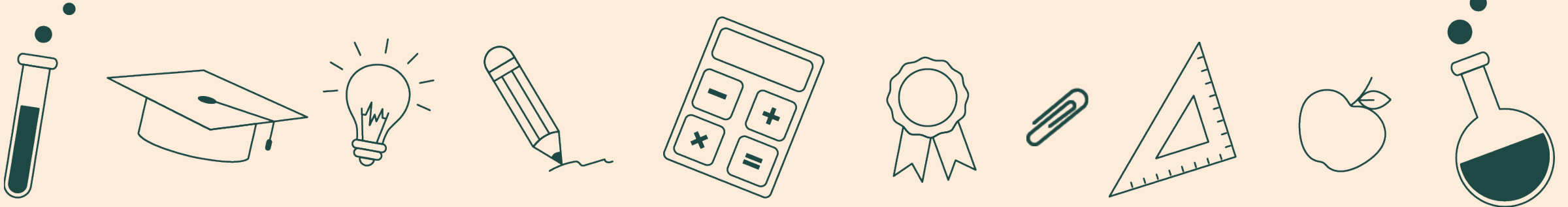




Open Government 201

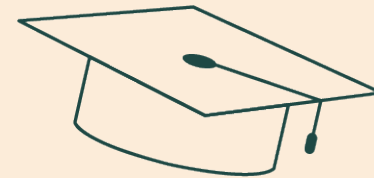
Kristen Settlemire, Esq.
Assistant Attorney General



Agenda

- The Georgia Open Meetings Act
- The Georgia Open Records Act
- Questions





The Georgia Open Meetings Act



What is a meeting?



A meeting is a gathering of the quorum of the governing board of an agency at which any official business, policy, or public matter is discussed, formulated, presented, or voted on.

A gathering of a quorum of a subcommittee created by the board is also a meeting.



What is NOT a meeting?



- Inspecting physical facilities
 - *NO official business may be discussed or voted on*
- Attending state-wide or regional meetings or training
 - *Official business may be discussed, but no voting*
- Meeting with state or federal legislators or officials
 - *Official business may be discussed, but no voting*
- Attending a social/ceremonial/civic/religious event
 - *NO official business may be discussed or voted on*



Regular Meetings



A **regular** meeting is held at the same time & place on a regular schedule

(For example, the third Tuesday of every month)

Notice:

- Time/date/location should be permanently posted at the location of the meeting
- Should also be posted on the agency's website



“Special” Meetings



A “special” or “called” meeting is one that is not a regular scheduled meeting.

Notice:

- At least 24 hours’ notice to the legal organ
 - *If the legal organ publishes less than 4 times weekly, it’s sufficient to post a notice at the regular meeting location at least 24 hours in advance.*



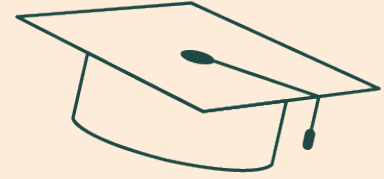
Emergency Meetings



- An emergency meeting is held when “special circumstances” exist and 24 hours’ notice is not possible
- **Notice:** *Should include the subject of the meeting*
 - Provide notice to the county legal organ
(OR a newspaper that has a larger circulation)
 - Give as much additional notice as is possible
- Minutes should record the reason the meeting was held with less than 24 hours’ notice and should describe the type of notice given



Teleconference Meetings



A school with a state-wide attendance zone may have board meetings by teleconference (e.g., conference call or Zoom).

Other schools may meet by teleconference only “under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services.” O.C.G.A. § 50-14-1(g)(2).



Agendas



- Every meeting must have an agenda.
- The agenda should include “all matters expected to come before the agency or committee.”
- Should be available on request;
- **Should be posted at the meeting site;**
- Should be available as far in advance as reasonably possible.



City of Forestville Park

City Council Meeting

December 1, 2015 – 6:00 p.m.

AGENDA



1. Welcome and Call to Order
2. Approval of previous month's minutes
3. City Manager's report
4. Committee Reports
 - a. Facilities Committee
 - b. Finance Committee
5. Review Action Items from last month's meeting
6. New business
7. Announcements
8. Executive session
9. Adjourn

February 17, 2018

8:00 a.m.

City Hall

WorkShop-Mayor & Council

Agenda

- **Retirement/Hiring of Part-Time Police Officer**
- **Resignation for Wayne Jernigan**
- **Letter/Contract for Roger Montgomery**
- **Review Applications for Meter Reader**
- **Quote from Sam Hall & Sons (to install water meters)**
- **Murray Landscaping services**
- **Backhoe Quotes**



Minutes



- Minutes should be “promptly recorded.”
- Should be available to the public -
 - - once approved as official by the agency
 - ***BUT*** no later than immediately following the next regular meeting.
- Draft minutes may need to be provided in response to an Open Records request



Minutes



- **Minimum requirements for minutes:**
 - Names of members present;
 - Description of each motion;
 - Identity of person making and seconding the motion;
 - *and* who voted for/against the motion;
 - The reason for an executive session (if one is held).



Minutes



- It's helpful to have much more detail than the minimum requirements
 - People in the community who couldn't attend will have more information;
 - Board members who couldn't attend will have more information;
 - You'll have a detailed record to look back at in the future.



Summary Reports



“A **summary** of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within **two business days** of the adjournment of the meeting.”

A really good agenda makes this easy to do!



Executive Sessions



Executive sessions may be held:

- To consult with an attorney about pending or potential litigation, settlements, or judicial actions;
- For mediation of a dispute between an agency and another party;
- To discuss the appointment, employment, compensation, hiring, disciplinary action, dismissal, or evaluation of an employee or public officer.



Executive Sessions (continued)



Executive sessions may be held:

- To discuss negotiations to purchase, dispose of, or lease property;
- To order an appraisal related to the purchase or disposal of real estate;
- To enter into a contract or option to purchase, dispose of, or lease real estate
 - **This requires a subsequent public vote**



Executive Sessions (continued)



Official votes must be done in public,
not in executive session

A vote taken in executive session is nothing more than an
informal poll; it is NOT an official action



Executive Session Minutes



Minutes of each executive session should be kept

- These do NOT have to be shared with the public
- Just file them away in case you ever need them.



Executive Session Affidavits



An notarized affidavit should be signed for each executive session

- It should affirm that the executive session was “devoted to matters within the exceptions provided by law”
- And should identify the specific exceptions

This affidavit should be available to the public



CLOSED MEETING AFFIDAVIT

STATE OF GEORGIA
COUNTY OF WHITE

AFFIDAVIT OF BOARD OF COMMISSIONERS

The White County Board of Commissioners, being duly sworn, states under oath that the following is true and accurate to the best of their knowledge and belief:

1.

The White County Board of Commissioners met in a duly advertised meeting on Nov 24, 2014.

During such meeting, the Board voted to go into closed session.

3.

The executive session was called to order at 6: a.m./p.m.

4.

The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:

☒ Consultation with the county attorney or other legal counsel to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. R. 50-14-2(1);

☐ Discussion of tax matters made confidential by state law as provided by O.C.G.A. 111, 50-14-2(2) and *(insert the citation to the legal authority making the tax matter confidential)*

☐ Discussion of the future acquisition of real estate as provided by O.C.G.A. 111 50-14-3(4);

☒ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. 11L 50-14-3(6);



The executive session was called to order at 6:00 a.m./p.m.

4.

The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:

☒ Consultation with the county attorney or other legal counsel to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. R. 50-14-2(1);

☐ Discussion of tax matters made confidential by state law as provided by O.C.G.A. 111, 50-14-2(2) and *(insert the citation to the legal authority making the tax matter confidential)*


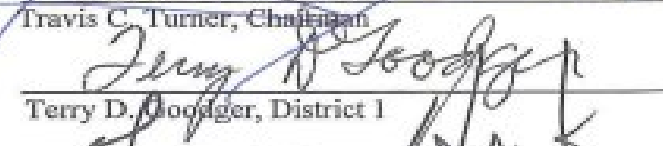



☐ Discussion of the future acquisition of real estate as provided by O.C.G.A. 111 50-14-3(4);

☒ Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. 11L 50-14-3(6);

☐ Other (describe the exemption to the open meetings law): _____
as provided in (insert the citation to the legal authority
exempting the topic) _____

This 24th day of November, 2014.

Sworn to and subscribed before me this
24th day of Nov, 2014.
Shanda Murphy
Notary Public
My commission expires: _____



Travis C. Turner, Chairman

Terry D. Goodger, District 1

Lyn Holcomb, District 2

Edwin Nix, District 3

Craig Bryant, District 4



“Open Access”

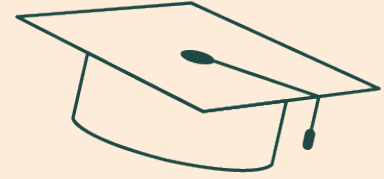


All meetings **MUST** be **open to the public**

- The public should be able to see and hear
- The public may take photos or make recordings
- Motions and votes should be clear and specific enough that the public understands what is being voted on.



Robert's Rules of Order



A meeting should follow some kind of parliamentary procedure

- It doesn't necessarily have to be Robert's Rules of Order
- It can be a simplified version of Robert's Rules of Order



Public Comments



The Open Meetings Act doesn't require an agency to allow public comments

However, O.C.G.A. § 20-2-58(b) does require school boards to have public comment periods.

- “A local board of education shall not require notice by an individual more than 24 hours prior to the meeting as a condition of addressing the local board during such public comment period. “
- “The chairperson of the local board of education shall have the discretion to limit the length of time for individual comments and the number of individuals speaking for or against a specific issue.”

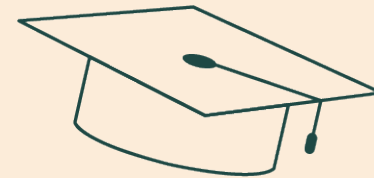


The Purpose of Parliamentary Procedure



- The people attending the meeting should understand what the board is discussing and voting on.
- The members of the board should also understand the topic being discussed.
- All board members should be able to participate in the discussion.
- Discussions should stay on topic, and be conducted in a respectful, civil, professional way.





The Georgia Open Records Act



Responding to an ORR



- Records should be made available “within a reasonable amount of time, not to exceed three business days” from receipt of the request
- When some records are available and some are not, immediate access must be permitted to the ones that are available – O.C.G.A. 50-18-71(b)(1)(A)
 - This is called “rolling access”



Responding to an ORR - Continued



Where the agency is required to or has decided to withhold all or part of a record, it must provide the requestor with the specific legal authority exempting the record from disclosure. O.C.G.A. § 50-18-71(d).



Text Messages – O.C.G.A. § 50-18-71(g)



- Text messages sent and received by a public official or employee that are used to conduct public business are public records and should be provided in response to an Open Records request.
- The content of the text message determines whether it is a public record – not who the phone belongs to.
- Only the subject text message must be disclosed – not the contents of the whole phone



Emails from a Private Account – O.C.G.A. § 50-18-71(g)



- Many small agencies or commissions are not able to provide official email accounts for employees or public officers; therefore, these individuals use their own private email accounts to conduct business.
- Any emails about public business should be provided in response to an Open Records request.



Records Held by Third Parties



- Two options:
 - 1) School can get a copy of the records from the third party and provide them to the requester OR
 - 2) Ask the third party to provide the records directly to the requester
- The agency should make sure its records are made available to the public, even if a 3rd party has the records



Student Educational Records

- Although student educational records are public records, state law expressly exempts personally-identifiable student information in educational records from disclosure under the open records act.
- Certain individuals may request student records pursuant to the Family Educational Rights and Privacy Act (FERPA).
- If documents requested pursuant to the Open Records Act *can* be redacted to exclude personally-identifiable student information, such documents must be provided.

Common Records Exemptions

- Personally identifiable information in educational records - O.C.G.A. § 50-18-72(a)(37)
- Secure test materials - O.C.G.A. § 50-18-72(a)(38)
- Personal contact information for staff - O.C.G.A. § 50-18-72(a)(21)
- Health insurance and financial information (not salaries) for staff - O.C.G.A. § 50-18-72(a)(20)(A)

Common Non-Exempt School Records

- Records involving students not related to education – e.g., security video maintained by a law enforcement unit.
- Designated Directory Information under FERPA.
- Employee discipline actions.
- Employee salaries.
- Employee evaluations that are not TKES/LKES.



Redactions

1 For the following reasons, all pending motions to seal are hereby DENIED. As an
2 initial matter, [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 It has also not escaped the Court's attention that [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

United States District Court
For the Northern District of California



How to Calculate Three Business Days



MAY 2019						
SUN	MON	TUE	WED	THU	FRI	SAT
			1 Request received Before 5	2 Day 1	3 Day 2	4
5	6 Day 3	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25

Response is due by close of business on Day 3, regardless of what time it was received on Day 0.

How to Calculate Three Business Days



MAY 2019						
SUN	MON	TUE	WED	THU	FRI	SAT
			1 Request received after CoB	2	3 Day 1	4
5	6 Day 2	7 Day 3	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25

If request is received after close of business, consider it received the next business day. Response is due by the end of the day on Day 3.

“Three Day Letters”



- If the records are available, the agency must “produce them for inspection” within three business days
- EXCEPT ... that when some records are not immediately available or the agency estimates it is going to charge more than \$25.00 to produce the records, the agency must send a “three day letter” to the requestor.



“Three Day Letters” Continued



- The “three day letter” should include a timeline of when the records will be made available.
- If the estimated cost of records is more than \$25.00, the three-day letter should also provide the cost estimate.
- In that case, the agency should wait for approval from the requestor before proceeding to work on the request.

December 8, 2015

Joe G. Smith
123 Valley Drive
Atlanta, Georgia 30303



RE: *Your Open Records request, received December 4, 2015*

Dear Mr. Smith:

I am writing in response to your request for records, which the Attorney General received on December 4, 2015. You made the following request:

1. All emails, documents and records that have the following names in the body, subject or title that have been sent to and or received from any person directly or indirectly since January 1, 2015: Patrick Flanagan, Patricia Flanagan
2. All emails, documents and records that have the following names in the body, subject or title that have been sent to and or received from any person directly or indirectly since January 1, 2013: Water Department, Facilities Department

We searched our document server, which contains letters, spreadsheets, and other types of files, for all the keywords that you provided. We found one document that was responsive to your request for documents containing the search term "Patrick Flanagan" and another containing "Patricia Flanagan." Those two documents are enclosed.

We searched our case management system, which tracks the physical files that we have opened. One of those files contained a letter with an attachment matching the search term "Water Department;" that letter and attachment are enclosed.

We searched our email server for all the keywords that you provided. We have located approximately 870 emails that may be responsive to your request, but many of them appear to be duplicates.

I estimate that it will take 5 days to go through the emails that we have located, eliminate any duplicate records, and redact any information that may need to be withheld. I expect that some records may be withheld pursuant to O.C.G.A. §§ 50-18-72(a)(41) [Attorney-client privilege] and 50-18-72(a)(42) [Confidential attorney work product]. If any other exceptions are relied on after the records are reviewed, I will provide those statutory provisions.

I estimate that it will take approximately 5 hours to review and redact the records. At an hourly rate of \$17.50 for an administrative assistant to do the work, the approximate cost would be \$87.50; that amount will vary based on the actual number of records and time required.

If printouts of the records are provided, at a cost of 10¢ per page, I estimate the copying cost will be \$20. If you would rather have the records scanned and burned onto a CD, please let me know; the cost for that will be less than \$5.00. I think that the number of pages will be too large for us to email the records, but I will let you know if that turns out to not be the case.

Therefore, I expect the total cost to be approximately between \$92.50 and \$107.50.

Please let me know if you would like us to proceed with assembling and providing you with the remaining records that we have located.

Sincerely,

JENNIFER COLANGELO
Assistant Attorney General

Enclosure

Calculating Costs



- You may charge the hourly rate of the LOWEST paid full-time employee capable of searching and producing responsive records, excluding the first 15 minutes.
- You MAY NOT charge attorney's fees for searching, producing, or responding to open records requests, UNLESS the attorney is the only person who can respond.
- Costs on letter or legal sized paper: 10 cents per page, if copies are made
- Copies of CDs, DVDs, videotapes: the actual cost of producing the copy can be charged.



Pre-Payment and Non-Payment



- There are only two instances where an agency may require prepayment – O.C.G.A. § 50-18-71(d)
 - 1) If the estimated cost of production is \$500.00 or more OR
 - 2) If the requestor did not pay for a previous request where the costs were properly estimated



Pre-Payment and Non-Payment – Loophole



- Sam Lawson makes a request; he gets the records but does not pay.
- Sam makes another request (“request #2”). You tell him he must pay in advance because he did not pay for the last request.
- Sam’s wife, Lori Lawson, sends you a request: it is the same as Sam’s second request.
- Lori doesn’t have to pay in advance, even though you know she is making the request so that Sam doesn’t have to pay.

Records That Don't Exist



- An agency is not required to produce records that do not exist at the time the request is made – O.C.G.A. § 50-18-71(j)
- Additionally, an agency does not have to compile records, create spreadsheets, and/or create summaries that do not already exist.
- Finally, an agency does not have to answer questions from a requestor – the Open Records Act only requires production of records.



Examples of Tricky Requests



- Any rules, policies, or statutes that authorize the action taken by the HR Director on April 1, 2021.
- Any responsive records hidden by the school in its response to Open Records Act requests made by Parent X.
- Minutes from any meeting where school's infectious disease policy was discussed.
- All complaints received about the school secretary.



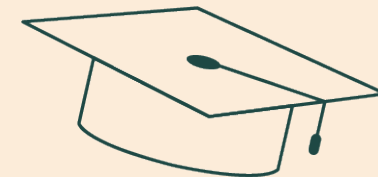
Violations of the ORA – O.C.G.A. § 50-18-74



- Violations of the ORA can lead to a \$1,000.00 fine for the first violation and a \$2,500.00 fine for each additional violation within 12 months.
- The standard for a civil violation is negligence. The standard for a criminal violation (misdemeanor) is willfulness.
- Attorney's fees may also be awarded.
- Acting in good faith in your actions is a defense.



Attorney General Mediation Program



- The Attorney General's Office has an informal mediation program in which it will attempt to resolve disputes alleging violation of the OMA and/or ORA.
- Free training offered as part of program
- If you are interested in scheduling a training, please contact Assistant Attorney General Jennifer Colangelo at jcolangelo@law.ga.gov.

