

**AN INITIATED MEASURE AMENDING THE ARKANSAS CODE TO CREATE THE
“ARKANSAS GOVERNMENT TRANSPARENCY ACT”; AND TO MODERNIZE, CLARIFY,
AND UPDATE THE FREEDOM OF INFORMATION ACT OF 1967.**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. This initiated act shall be known as the “Arkansas Government Transparency Act”.

SECTION 2. Arkansas Code § 6-13-619(e), as amended by Act 883 of 2023, concerning an executive session for a school board, superintendent, and attorney to discuss pre-litigation, litigation, and settlement, is repealed.

~~(e)(1) In addition to the circumstances in which an executive session is permitted under the Freedom of Information Act of 1967, § 25-19-101 et seq., the board of directors may meet in executive session for the purposes of:~~

~~(A) Pre-litigation discussions;~~

~~(B) Litigation updates;~~

~~(C) The discussion and consideration of settlement offers;~~

~~(D) The discussion and consideration of contract disputes with the superintendent of the school district; and~~

~~(E) Discussions pertaining to real property.~~

~~(2) In addition to the persons permitted to be present at an executive session under the Freedom of Information Act of 1967, § 25-19-101 et seq., the following may be present at an executive session of the board of directors upon invitation of the board of directors:~~

~~(A) The superintendent of the school district; and~~

~~(B) The attorney for the school district.~~

SECTION 3. Arkansas Code § 25-19-103, concerning definitions associated with the Freedom of Information Act of 1967, is amended to add additional subdivisions to read as follows, and the Code Revision Commission is directed to reorder and renumber the subdivisions appropriately:

(10) “Cybersecurity” means the measures taken to achieve protection against the criminal or unauthorized use of electronic data; and

(11) “Public notice” means the notice distributed to the general public.

SECTION 4. Arkansas Code § 25-19-105(b)(12), concerning the personnel records exemption from requests for disclosure under the Freedom of Information Act of 1967, is amended to read as follows:

~~(12)(A) Personnel records~~ Any portion of a personnel record to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy;

(B) Any portion of a public record not subject to subdivision (b)(12)(A) of this section containing information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of an individual whose information is contained within the record;

SECTION 5. Arkansas Code § 25-19-105(e), concerning the time for production of public records that are subject to disclosure, is amended to read as follows:

~~(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.~~

(e)(1) Each request for access to public records shall be complied with immediately if possible, but in no event later than the end of the third working day following the date the request is received by the custodian.

(2) If access to the requested records is not provided immediately, the custodian shall promptly specify in writing to the requester the:

(A) Reasons why access to the records is not immediately available;
and

(B) Time and date within the three-working-day period that the responsive records will be provided.

(3) Failure of the custodian to respond within three working days shall be considered a denial of the request unless the response time is extended pursuant to § 25-19-115.

SECTION 6. Arkansas Code § 25-19-106, concerning the public meetings requirements under the Freedom of Information Act of 1967, is amended to add additional subsections to read as follows:

(f) "Public meeting" includes without limitation:

(1) Communication between two (2) or more voting or nonvoting members of a governing body for the purpose of exercising a responsibility, authority, power, or duty

delegated to the governing body on any matter on which official action will foreseeably be taken by the governing body; and

(2) A series of two (2) or more formal or informal, one-on-one communications:

(A) Made between an agent or employee of the governing body and more than one (1) member of the governing body;

(B) Used to poll the votes or support of the members of the governing body; and

(C) Concerning any matter on which official action will foreseeably be taken by the governing body.

(g)(1) Two (2) or more employees of a governing body may communicate for the purpose of exercising a responsibility, authority, power, or duty delegated to an employee without notice and an open meeting under this section.

(2) As used in this section, "communication" includes without limitation a communication made in person, by telephone, electronically, or by other means.

(h) A governing body may meet in executive session to discuss the response to the terms of a demand affecting the cybersecurity of the government entity.

SECTION 7. Arkansas Code § 25-19-107, concerning penalties available in an appeal from a denial of rights guaranteed by the Freedom of Information Act of 1967, shall be amended to read as follows:

25-19-107. Appeal from denial of rights — Attorney's fees, expenses, costs, civil penalty.

(a) Any citizen denied the rights granted to him or her by this chapter Arkansas law concerning government transparency including without limitation access to public records, openness of public meetings, and time, place, manner, term, or medium of public notice may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit court of the residence of the aggrieved party, if the State of Arkansas or a department, agency, or institution of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds, is involved.

(b) Upon written application of the person denied the rights provided for in this chapter by Arkansas law concerning government transparency including without limitation access to public records, openness of public meetings, and time, place, manner, term, or medium of public notice, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and to hear and determine the case.

(c) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(d)(1)(A) ~~In any action to enforce the rights granted by this chapter~~ granted by Arkansas law concerning government transparency including without limitation access to public records, openness of public meetings, and time, place, manner, term, or medium of public notice, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who, ~~after filing suit,~~ has obtained from the defendant a significant or material portion of the public information he or she requested, unless the court finds that the position of the defendant was substantially justified has substantially prevailed.

(B) A court may find that a plaintiff has substantially prevailed:

(i) After a trial on the merits;

(ii) Through a defendant's voluntary compliance; or

(iii) Through an agreed resolution with a defendant.

(2) If the defendant has substantially prevailed in the action, the court may assess expenses litigation costs against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes in bad faith.

~~(e)(1) Notwithstanding subsection (d)(1) of this section, the court shall not assess reasonable attorney's fees or other litigation expenses reasonably incurred by a plaintiff against the State of Arkansas or a department, agency, or institution of the state.~~

~~(2)(A) A plaintiff who substantially prevailed in an action under this section against the State of Arkansas or a department, agency, or institution of the state may file a claim with the Arkansas State Claims Commission to recover reasonable attorney's fees and other litigation expenses reasonably incurred.~~

~~(B) A claim for reasonable attorney's fees and litigation expenses reasonably incurred in an action against the State of Arkansas or a department, agency, or institution of the state shall be filed with the commission pursuant to § 19-10-201 et seq. within sixty (60) days of the final disposition of the appeal under subsection (a) of this section.~~

The circuit court shall assess a civil penalty against the custodian or member of the governing body if:

(A) A person appeals to a circuit court from a denial of rights granted by Arkansas law concerning government transparency including without limitation access to public records, openness of public meetings, and time, place, manner, term, or medium of public notice;

(B) The appeal is filed no more than one (1) year after the alleged violation; and

(C) The circuit court finds by clear and convincing evidence that the defendant:

(i) Acting as a custodian, purposely withheld a public record that the defendant knew was subject to disclosure under Arkansas law concerning government transparency; or

(ii) Purposely conducted a public meeting in a manner that the defendant knew did not comply with the requirements of Arkansas law concerning government transparency.

(2) The defendant shall be personally liable under this subsection (e), and the civil penalty shall:

(A) Not be satisfied by public funds; and

(B) Be paid to a fund to be used for the purpose of government transparency which shall be determined by majority vote of the General Assembly.

(4) The civil penalty shall be:

(A) One thousand dollars (\$1,000); or

(B) An amount that is:

(i) Greater than one thousand dollars (\$1,000.00); and

(ii) Set by majority vote of both houses of the General Assembly.

SECTION 8. Arkansas Code Title 25, Chapter 19 is amended to add additional sections to read as follows.

25-19-113. Public records pertaining to security - presumption of disclosure.

(a) A public record under § 12-8-108(c) or § 25-19-105(b)(28) that is more than three (3) months old is presumed to be subject to disclosure.

(b) To rebut this presumption and prevent disclosure of the requested public record:

(1) The custodian shall initiate review by a circuit court with jurisdiction within three (3) days of receiving the request for disclosure;

(2) The custodian shall serve the requester with an affidavit giving notice of the action, of all scheduled court dates, and that the requester has a right to respond at the circuit court hearing; and

(3) The custodian has the burden to prove that confidentiality of the public record is essential to the ongoing security services listed in this section.

(c)(1) The circuit court shall set the hearing or trial on the matter no later than seven (7) days after the initial filing requesting review.

(2) The requester may engage with the court as a party to the action.

(d) The circuit court may prohibit disclosure of the requested public record for a period not to exceed two (2) years.

25-19-114. Arkansas Government Transparency Commission.

(a)(1) The Arkansas Government Transparency Commission is created on and after July 1, 2025.

(2) The purpose of the commission is to assist Arkansas citizens in:

(A) Accessing public records and public meetings; and

(B) Enforcing government compliance with the law concerning the citizen's rights to government transparency.

(b)(1) The commission shall be comprised of five (5) members.

(2) Three (3) members shall be appointed by the Supreme Court who shall include:

(A) At least one (1) licensed attorney in good standing, who is not a justice or judge, but who is a former elected circuit court judge, Judge of the Court of Appeals, or Supreme Court Justice;

(B) At least one (1) person having demonstrated expertise in the government transparency laws of this state; and

(C) At least one (1) person with experience as a journalist or representative of the media.

(3) The Speaker of the House and the President Pro Tempore of the Senate shall each appoint one (1) member who shall each be a licensed attorney in good standing, who is not a justice or judge, but who is a former elected circuit court judge, Judge of the Court of Appeals, or Supreme Court Justice.

(4)(A) Except for the initial terms, each member of the commission shall serve three (3) year terms.

(B) The initial term of each commissioner appointed by the Supreme Court shall begin on July 1, 2025, and a new term will begin July 1 every three (3) years thereafter.

(C)(i) The initial terms of the appointments made by the Speaker of the House and the President Pro Tempore of the Senate shall begin on July 1, 2025 and be two (2) years in length.

(ii) The terms of the appointments made by the Speaker of the House and the President Pro Tempore of the Senate on July 1, 2027 and made thereafter shall be three (3) years in length.

(D) The initial appointments for the term beginning on July 1, 2025 shall be made no later than January 1, 2025.

(5) In the event of a vacancy on the commission, a successor shall be appointed by the designated appointing official within thirty (30) days to serve the remainder of the unexpired term.

(6) A commissioner shall not be:

(A)(i) Except as provided in subdivision (b)(6)(A)(ii) of this section, a federal, state, or local government official or employee;

(ii) A person who is a professor at a public institution of higher education may serve on the commission;

(B) An elected public official;

(C) A candidate for public office;

(D) A lobbyist as defined in § 21-8-402; or

(E) An officer or paid employee of an organized political party as defined in § 7-1-101.

(c)(1) The commission shall elect its chair.

(2)(A) A majority of the membership of the commission shall constitute a quorum for conducting business.

(B) No action shall be taken except by an affirmative vote of a majority of those present and voting.

(d) Members of the commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e) The commission shall meet at such times as may be provided by its rules, upon call of the chair, or upon written request to the chair of any two (2) members.

(f) The commission shall:

(1) Upon request, assist a citizen who has been denied access to a public document or public meeting or otherwise denied any right concerning government transparency in obtaining compliance from a custodian or governing body; and

(2) Develop and conduct government transparency and Freedom of Information Act of 1967, §§ 25-19-101, et seq. compliance and information trainings for public employees, elected officials, and citizens which shall be open to the public and include without limitation:

(A) Instruction on state government transparency laws, public meetings requirements, and public records requirements;

(B) Legislative updates;

(C) Supreme Court and Court of Appeals updates; and

(D) Recommend best practices for government transparency compliance.

(g) The commission may:

(1) Under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., promulgate reasonable rules in furtherance of and consistent with this chapter:

(2)(A) Designate a reasonable fee to be paid to the custodian for production of public records pursuant to a request made primarily to data mine for commercial purposes.

(B) "Commercial purposes" does not include requests made by members of the media or for educational or academic purposes;

(3) Issue advisory opinions and guidelines on the requirements of state government transparency laws;

(4) After a request has been submitted to the commission by a citizen, governing body, or custodian:

(A) Conduct a government transparency compliance investigation or audit;

(B) Render findings;

(C) Direct a custodian, governing body, or public official to comply with government transparency laws and obligations; and

(D) Issue disciplinary action against a governing body or custodian as authorized by § 25-19-116;

(5) Pursuant to commission investigation or audit, subpoena any person or the books, records, or other documents being held by any custodian, governing body, or public official and take sworn statements;

(6) Administer oaths for the purpose of taking sworn testimony of witnesses and conduct hearings;

(7)(A) File suit in the Pulaski County Circuit Court or in the circuit court of the county wherein the requester resides to obtain a judgment for the amount of any fine imposed under § 25-19-116, or to enforce an order of the commission with which a custodian, governing body, or public official has not complied.

(B) Said action by the court shall not involve further judicial review of the commission's actions.

(C) The fee normally charged for the filing of a suit in any of the circuit courts in the State of Arkansas shall be waived on behalf of the commission; and

(8) Hire staff and retain legal counsel.

(h)(1) The commission shall be entitled to funding in amounts sufficient to discharge its imperative duties. The General Assembly shall appropriate moneys in such amounts as are necessary for the commission to accomplish its tasks.

(2) If the commission requires moneys to discharge its duties before the convening of the legislative session in which the General Assembly can next appropriate moneys, the commission shall be entitled to and shall receive moneys from the Constitutional Officers Fund or its successor fund in such amounts necessary to discharge its duties until the General Assembly duly appropriates moneys to the commission.

25-19-115. Public records not received - Commission review and assistance.

(a)(1) A person who has requested public records under § 25-19-105 and the custodian of the requested public records may agree to additional time and a schedule for production of public records.

(2) If there is no agreement for additional time and a schedule for production of public records:

(A) The person who has requested public records under § 25-19-105 and not received the requested public records may, after the third working day or received notice of a denial of transparency rights from the custodian, whichever occurs first, request review by the Arkansas Government Transparency Commission; and

(B) The custodian may, no later than the close of business on the third working day after a request for public records is made, request review by the commission and additional time to comply with the request for public records.

(b)(1) The commission shall issue a schedule for production of the public records requiring immediate production or granting a reasonable time not to exceed thirty (30) days for compliance with the request for public records, if the commission determines that the request cannot be completed within three (3) days because:

(A) The volume of the request is too large to be fulfilled within three (3) days;

(B) The request requires an extensive search that will take more than three (3) days to complete;

(C) The requested records have not been located after an expansive search and further efforts are being made to locate them; or

(D) The request requires substantial redaction of exempt information that cannot be completed within three (3) days.

(2) In making the determination under subsection (b)(1) of this section, the commission shall consider:

(A) Whether the custodian of the public record has allocated sufficient staff and budget to comply with state law concerning government transparency;

(B) Whether the custodian made a good faith effort to timely comply with the request, in part or in whole, before seeking review from the commission;

(C) The extent to which any public records have been provided in response to the request and the timeliness of the production thus far;

(D) The terms of any schedule for production offered by the custodian or the requester, and whether any portion of that schedule is agreeable to the parties; and

(E) Any efforts by the custodian and requester to communicate concerning the plain language of the request, whether the plain language of the request meets the requestor's needs, and whether the request can be narrowed to better meet the requestor's needs.

(c)(1) A schedule for production under this section shall:

(A) Only be issued after the commission:

(i) Considers the factors in subdivision (b)(2) of this section; and

(ii) Finds that the request is so extraordinary as to require additional time for compliance with the request; and

(B) Require dates for partial compliance before the last date for full production is scheduled, if possible.

(2) If upon the expiration of the thirty (30) days the custodian has not provided all responsive records, the commission shall order him or her to appear and show cause as to why a sanction should not be levied.

(d) If a request for additional time or a schedule for production of public records is filed:

(1) Neither the person requesting the public records nor the custodian may file an action under § 25-19-107 until the commission issues the schedule of production; and

(2) The commission shall issue the schedule of production no later than seven (7) days after the request is filed with the commission.

(e) The issuance of or agreement to a schedule of production under this section shall:

(1) Be decided in a manner that expedites compliance with the request for public records, if possible; and

(2) Not extinguish or void any remedy for noncompliance provided for by law.

25-19-116. Disciplinary action.

(a) The Arkansas Government Transparency Commission may, after investigation or audit, fine a governing body or custodian in an amount not to exceed one thousand dollars (\$1,000.00) for:

(1) Failure to comply with state government transparency laws, including without limitation laws concerning public records, openness of public records, openness of public meetings, and time, place, manner, term, or medium of public notice; or

(2) Submitting a request to the commission, pursuant to § 25-19-115(a)(2)(B) or otherwise for a frivolous or dilatory purpose.

(b) A fine under this section shall be deposited in:

(A) The general fund; or

(B) Another fund designated by majority vote of the General Assembly.

25-19-117. Appeal of an Arkansas Government Transparency Commission decision.

(a) A requester, custodian, or governing body may appeal any decision of the commission to the Pulaski County Circuit Court, circuit court in the county where the requester resides, the circuit court in the county where the custodian holds regular office hours, or the circuit court in any county where the governing body holds public meetings.

(b) The requester may initiate proceedings under § 25-19-107 or other Arkansas law.

SECTION 9. DO NOT CODIFY. Any law enacted by the Arkansas General Assembly after January 1, 2024 and before adoption of this initiated act by the people is repealed if it amends Arkansas law in a manner that reduces government transparency including without limitation reducing the openness of public meetings, limiting disclosure of public records, or altering the time, place, manner, terms, or medium of public notice.

SECTION 10. DO NOT CODIFY. All provisions of the statutes and common law of this State to the extent inconsistent or in conflict with any provision of this initiated act are expressly declared null and void.

SECTION 11. DO NOT CODIFY. If any provision or section of this initiated act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the initiated act that can be given effect without the invalid provision or application, and to this end the provisions of this initiated act are declared to be severable.