# Setting the Record Straight: Handling Public Records for Alabama School Boards

Jayne Harrell Williams, Esq.





☐ Public Records Law

☐ Basics of the Law

☐ Maintaining Records

☐ Records Requests

☐ The Future

# Public Records Law





#### Alabama Public Records Law

Section 36-12-40 (1923)
Rights of citizens to inspect and copy public writings; exceptions.

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



## What's missing?

- **X** What is a public record?
- **X** Who is a citizen?
- **X** How long to respond?
- **X** What if we don't respond?



### Alabama Public Records Law

- Common Law
- Law made by the courts



What is a public record?



### What is a public record?

All written, typed or printed books, papers, letters, documents and maps...made or received by the government.

A record reasonably necessary to record the required business and activities of a public office so that the status and condition of such business and activities can be known.

# Examples of Public Records



- Most personnel file contents
- Payroll and salary records Test scores by school or
- Applications and résumés
- Employee lists and email addresses
- Employee assignments
- Teaching certificates

- Employment experience
- Hiring documents
- 5 Test scores by school or district
  - Employee evaluations
  - Policies and procedures
  - Disciplinary documents
  - Hearing transcripts



# Examples of Public Records

- Bid documents
- Contracts
- Purchase orders
- Audits
- Reimbursement forms
- Invoices
- Check register
- Board minutes
- Much of board packet

- Superintendent recommendations once acted on
- Computer records
- Emails
- Database information
- Maps
- Photographs
- Audio and video tapes

# What is not a public record?

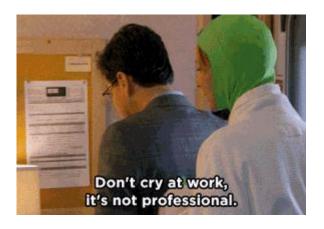


- Student records
- Confidential references
- Employee addresses
- Background check forms
- Library records
- Banking information
- Health/Medical info

- Security information
- Individual notes by board members
- Documents protected by attorney-client privilege
- Law enforcement records
- Records which counsel result in undue harm or embarrassment (high burden)

# Personnel File Information

- Most information is public
- Some information is private





#### **EMPLOYMENT / JOB APPLICATION**

PERSONAL INFORMATION						
I ENOUGE IN CHIMATION						
FULL NAME: Jayne Harrell Williams DATE: 04-20-2021						
First Middle Last						
ADDRESS:						
City State Zip Code						
E-MAIL:PHONE:						
SOCIAL SECURITY NUMBER (SSN):						
DATE AVAILABLE: immediately DESIRED PAY: \$90,000 xx Hour □ salary						
POSITION APPLIED FOR: Queen of the World						
EMPLOYMENT DESIRED: ☐ FULL-TIME ☑ PART-TIME ☐ SEASONAL						
EMPLOYMENT ELIGIBILITY						
ARE VOLLA LLC CITIZENO SPARE THE						
ARE YOU A U.S. CITIZEN? EXYES \( \simega \text{NO*} \)						
*IF NO, ARE YOU ALLOWED TO WORK IN THE U.S.?						
HAVE YOU EVER WORKED FOR THIS EMPLOYER? ☐ YES* ﷺ NO						
*IF YES, WRITE THE START AND END DATES:n/a						
HAVE YOU EVER BEEN CONVICTED OF A FELONY? ☐ YES* ☑ NO						
*IF YES, PLEASE EXPLAIN:						
EDUCATION						
EDUCATION						
HIGH SCHOOL: Lanier Academic MP CITY/STATE: Montgomery, AL						
FROM: 08/1990 TO: 05/1992						
GRADUATE? MXES IN NO DIPLOMA: Advanced Diploma						
COLLEGE: Florida A&M Univ. CITY/STATE: Tallahassee, FL						
FROM: 08/1992 TO: 12/1995						
GRADUATE? □ xxes □ no DEGREE: B.S. Political Science						
<b>n</b>						



# Financial Information

Most information is public





#### Alabama Public Records Law

### Section 36-12-40 (1923)

Rights of citizens to inspect and copy public writings; exceptions.

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

### Competitive Bid Law

Section 16-13B-4
Notice of proposed purchase; bids; reverse auction procedures.

•••

(b) Except as provided in subsection (c), all bids shall be sealed when received and shall be opened in public at the hour stated in the notice.



### Section 16-13B-7

Defaulting bidder; award to second lowest responsible bidder; preferences; sole source specification; life cycle costs; rejection of bids; lease-purchase contracts.

•••

(e) Each record, with the successful bid indicated thereon, and with the reasons for the award if not awarded to the lowest bidder, shall, after award of the order or contract, be open to public inspection.

### Security Information

- Always confidential
- Protects integrity of security systems and protocols



### Legal Information

- Some is confidential
  - Letters
  - Legal Advice
  - Attorney Work Product
- Some is public
  - Contract
  - Invoices (redacted)





Smith Law Firm 100 East Main Street Midtown, AL 30000

Supt. Rod Piper Midtown Board of Education 500 West Main Street Midtown, AL 30000

Invoice Date: Invoice No: January 10, 2018 00001

RE: Midtown General Matters 2018

#### Billing Quarter - October 1 to December 31

#### Services Rendered

11/02/2017	JHW (			Hours	
				2.30	
11/16/2017	Total fees			0.50 2.80	490.00
	Name Jayne Williams	Hours 2.80	<u>Rate</u> \$175.00		
	Total New Charges				490.00
01/10/2018	Transfer from Trust Account.				-490.00
	Balance Due				\$0.00

### Student Records

- Virtually always confidential
- FERPA Family Educational Rights & Privacy Act



### Recommendations and nonfinal documents

- AG Opinion 96-003
  - Recommendations are "superintendent's thought process" and confidential
- Baptist Health Care Authority vs. CARO, Alabama Supreme Court (2019)
  - Drafts, notes and nonfinal documents are public



# Emails and electronic records

- Usually will be public
- Is it "reasonably necessary to conduct the business of the entity"?



### Text messages

- Potentially public
- Hard to manage
- Don't forget Open Meetings Act implications



### Electronic records

- Creating a document?
  - No
- Compiling data?
  - Likely yes



# Who can ask for a public record?



# Who can ask for a public record?

- State law says "citizen"
  - State citizen?
  - US citizen?
  - Citizen of the world?
- 2013 U.S. Supreme Court case from Virginia held "citizen" means "state citizen"
  - State media
  - State company
- Use of surrogates

How much time do we have to respond?

# How much time do we have to respond?

- No set time to respond
- "Within reasonable timeframe"
- Time considerations
  - Size of request
  - Complexity of request
  - Location of documents
  - Prepayment needed?
  - Other work duties



# Can we charge for records?

## Can we charge?

- Provide free unless budgetary constraints
- Reasonable copy fee
- Cannot be used to discourage requests
- Can require prepayment/deposit



## Can we charge?

- Staff time can be charged for large requests
- Attorneys' fees cannot be charged
- No charge for using own phone to photograph
- Website/inspection option



Do we have to provide records in a particular format?

# Do we have to provide in the format requested?

- No requirement to provide in requested format
- No requirement to compile data
- Format is government's option
- Based on format government usually operates in

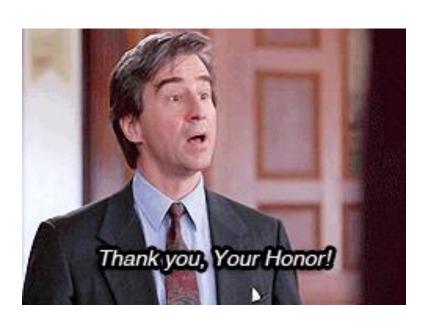


# What is considered a violation of the law?



# What constitutes a violation?

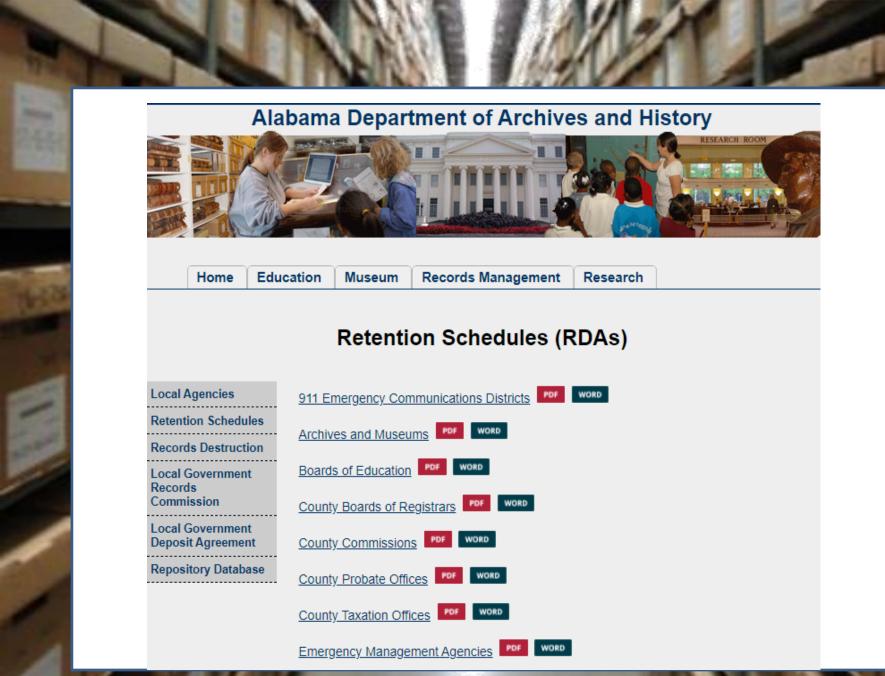
- Failing to respond at all
- Failing to respond in reasonable time
- Refusing to provide documents
- Redacting public information
- Burden is on the government



# What happens if we violate the law?

- Order documents turned over
- Pay court costs for requesting party
- Pay attorneys' fees for requesting party

# How do we maintain our records?



# **Local Boards of Education**



Functional Analysis &

Records Disposition Authority

### 1.03 Local Boards of Education Meeting Records.

a. Board meeting minutes/meeting packet. These are official minutes of meeting of the local board, along with the agenda and any attachments or other documents provided to board members for discussion at the meeting. Disposition: PERMANENT RECORD.

b. Committee meeting minutes and related records. These records document meetings of committees organized by the school board or by local schools. They may include minutes, records of elections to committees, correspondence, and materials reviewed by the committee.

Disposition: Temporary Record. Retain for useful life.

11.08 Employee Personnel Files. These records document an employee's work history with the school system. They are generally maintained as case files and include records of continuing education, performance evaluations, disciplinary actions, background checks, payroll deductions, and leave and salary documentation.

Disposition: Temporary Record. Retain 6 years after separation of employee.

10.05 Records of Formal Bids. These records document the bid process, including requests for proposals and unsuccessful responses.

a. Records documenting bids or services obtained by local boards of education. These records include requests for bid proposals, successful and unsuccessful bids by product or service vendors, and related correspondence.

Disposition: Temporary Record. Retain 7 years after the date bids were opened (Code of Alabama 1975 § 16-13B-4[d]).

I received a request.
What do I do now?



# Reminders

- ❖ We have to provide documents
- ❖ We do not have to answer questions
- ❖ We do not have to create documents



## Questions to ask?

- Is it from an Alabama citizen or entity?
- Is the information public?
- Do we have any documents?
- Do you need prepayment?



## April 2020 Requests

- Employee name
- Year of compensation
- Base salary amount
- Bonus amount
- Overtime amount
- Gross annual wages
- Position title

Dear Mr./Ms:
I represent the Board of Education and am in receipt of your request for employee salary information sent to Superintendent on April, 2020. We find the request to be valid under Alabama's public records law and I will be coordinating production on behalf of the Superintendent. Please direct all future communications to me.
You have requested records for over employees. Because there is no one database or physical document that has all of the information you have requested, we will need to assign an employee to physically pull and copy documents responsive to your request by hand. Obviously, our employees have assigned duties outside of responding to extensive public records requests, but we will commit to assigning an employee to pull and copy this information for hours per week. We expect the request to take weeks to complete. Due to the extensive amount of staff time involved to comply with this request, it will be necessary to charge a staff cost at a hourly rate of \$ A review of a sample personnel file reveals that the information you have requested will require 9 separate documents to be copied at a cost of cents per page.
Based on the above information, we estimate this project to cost as follows:
<ul> <li>Staff time: \$/hour x hours of staff time = \$</li> <li>Copy cost: \$0/copy x copies per employee x employees = \$</li> <li>Mailing cost: \$</li> <li>Total Cost \$</li> </ul>
In order to begin this process, you will need to pay a deposit of 10% of the total expected cost or \$ This deposit will be credited to the final amount. Once you have sent the deposit to my office, I will direct the Superintendent's office to begin the process. Until that time, we will take no action.

Finally, I am sure you aware that Alabama's public schools are currently closed as a result of COVID-19 and the Governor's State of Emergency Order. During this time, our central office is working at a reduced schedule through the summer. For this reason, there may be a delay in the office's ability to pull and copy these documents, but we assure you we will comply as soon as practicable.

# What's coming down the road?

News

Whitmire: Alabama is dead last for open records. The Legislature could fix that.

Updated Mar 17, 2021; Posted Mar 17, 2021

News

Alabama town's new excuse for hiding public records: We don't have to look for them

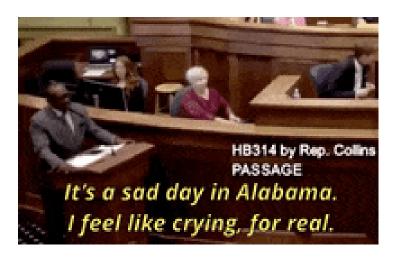
Updated Sep 16, 2020; Posted Sep 16, 2020

Sometimes, media have to remind government who it works for (that's you)

**OUR VIEW** 

Some officials would keep the public in the dark

Bill Perkins Mar 14, 2020 Updated Mar 14, 2020 💂 1



# SB 165 - Alabama Public Records Act

- Adds 10 pages of definitions and exemptions
- Mandates 14-day deadline to respond
- Dictates copying fees
- Creates Office of Public Access Counselor
- Establishes appeal procedures
- Establishes escalating penalties



# SB 165 - Alabama Public Records Act

- Voted out of Senate committee
- 6 days left in session

Where can I find help?

## AASB BOARDMANSHIP SERIES

DEVELOPING EXCELLENT SCHOOL BOARD LEADERS THROUGH QUALITY TRAINING, ADVOCACY AND SERVICES

## PUBLIC MEETINGS AND PUBLIC RECORDS

FIFTH EDITION 2017



ALABAMA ASSOCIATION OF SCHOOL BOARDS

www.AlabamaSchoolBoards.org

termine what records are typically

#### PRIVATE which could result in undue mbarrassment to an individual rcement records e addresses and phone numbers<sup>76</sup> atus of employees 78 information of employees l notes of board members made ation of evaluation<sup>81</sup> f work performed by attorneys e medical history<sup>8</sup> tial employment ndations8 alcohol test results 86 curity numbers8 nail addresses<sup>88</sup> excuses<sup>89</sup>

#### DUESTIONS

#### T FOR RECORDS?

ess to public documents. While the ourt case held the Virginia public can apply the same holding to Alabama. Of course, "citizen" is not limited to individuals. A "citizen" can be any Alabama resident, including parents, employees and public officials. Private businesses and media outlets are also considered "citizens" that can make requests under this law. <sup>35</sup>

### CAN THE BOARD REQUIRE THE REQUESTING PARTY TO FILL OUT A FORM TO REQUEST RECORDS?

Yes. Our courts have held that an entity's policy of requiring persons fill out a form to request records was permissible as long as it is not used to dissuade or prevent access to public documents.<sup>56</sup>

#### CAN THE BOARD ASK THE PURPOSE OF THE REQUEST?

Yes. Requests made for purely speculative reasons or idle curiosity can be declined, but it should be noted that media interest is not considered "idle curiosity".

#### HOW QUICKLY MUST REQUESTS BE PROVIDED?

The law does not dictate the timeframe a request has to be processed. The law merely requires that records be made available during normal business hours and within a reasonable period of time that limits disruption of work. The proposes are under no obligation to stop their work to immediately comply with a request, but a rule of reason should be read into the law. An illustration is helpful. If a reporter comes to Central Office and demands a copy of the personnel file of every teacher in the district, this would obviously take an extensive amount of time to compile. It could reasonably take weeks to fulfill such a request, But if the same reporter requests a copy of the board minutes approved at last night's board meeting and they are sitting on the secretary's desk, it would be reasonable to comply with that request, if not immediately, at least on the same day.

#### CAN THE BOARD CHARGE FOR INSPECTION OR COPIES OF RECORDS?

Potentially. The general rule is that the records should be provided for inspection for free unless extensive staff time is required to comply with the request. Likewise, copies should be provided for free unless budgetary constraints justify a nominal fee, e.g. 10-25 cents per copy. Fees should not be used to restrict or discourage access to the records. Additionally, it is not appropriate to charge a legal fee to compensate an attorney to review a request since the law presumes requests to be permissible.<sup>88</sup>

In recent years, issues have arisen regarding whether the requester can inspect a document and then photograph it with his cell phone. This is permissible and does not justify a charge for copying since no expense is incurred by the Board. 99

#### MUST THE BOARD PROVIDE RECORDS IN THE FORMAT REQUESTED?

No. The board is under no obligation to provide the information in any particular format, even if so requested. The information can be provided in paper form or

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# Thank you for listening!

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