

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

Jayne Harrell Williams, Esq.

AASBO APRIL
MORNING
BREAK
WEBINAR





❑ 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



A yellow file folder is shown against a black background. It has a white label with rounded corners on the top flap. The text on the label is in a black, monospaced font. Below the label, a white sheet of paper is partially visible, tucked into the folder.

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
- Applications and résumés
- Employee lists and email addresses
- Employee assignments
- Teaching certificates
- Employment experience
- Hiring documents
- 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

FULL NAME: Jayne Harrell Williams DATE: 04-20-2021
First Middle Last

ADDRESS: [REDACTED]
Street Address Apt/Suite

[REDACTED] [REDACTED] [REDACTED]
City State Zip Code

E-MAIL: [REDACTED] PHONE: [REDACTED]

SOCIAL SECURITY NUMBER (SSN): [REDACTED] - [REDACTED]

DATE AVAILABLE: immediately DESIRED PAY: \$ 90,000 ☒ HOUR ☐ SALARY

POSITION APPLIED FOR: Queen of the World

EMPLOYMENT DESIRED: ☐ FULL-TIME ☒ PART-TIME ☐ SEASONAL

EMPLOYMENT ELIGIBILITY

ARE YOU A U.S. CITIZEN? ☒ YES ☐ NO

*IF NO, ARE YOU ALLOWED TO WORK IN THE U.S.? ☒ YES ☐ NO

HAVE YOU EVER WORKED FOR THIS EMPLOYER? ☐ YES ☒ 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

HIGH SCHOOL: Lanier Academic MP CITY/STATE: Montgomery, AL

FROM: 08/1990 TO: 05/1992

GRADUATE? ☒ YES ☐ NO DIPLOMA: Advanced Diploma

COLLEGE: Florida A&M Univ. CITY/STATE: Tallahassee, FL

FROM: 08/1992 TO: 12/1995

GRADUATE? ☒ YES ☐ NO DEGREE: B.S. Political Science

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: January 10, 2018
Invoice No: 00001

RE: Midtown General Matters 2018

Billing Quarter - October 1 to December 31

Services Rendered

			Hours	
11/02/2017	JHW	[REDACTED]		
		[REDACTED]		
		[REDACTED]	2.30	
11/16/2017	JHW	[REDACTED]		
		[REDACTED]	0.50	
		Total fees	2.80	490.00

Staff Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>
Jayne Williams	2.80	\$175.00

	Total New Charges	490.00
01/10/2018	Transfer from Trust Account.	-490.00
	Balance Due	<u>\$0.00</u>

Student Records

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



Recommendations and non-final 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 non-final 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



A yellow file folder is shown against a black background. It has a white label on the top flap with the text "What is considered a violation of the law?". Below the label, there is a white rectangular insert that is partially visible, protruding from the folder's opening.

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

A yellow file folder is shown against a black background. It has a white label on the top flap with the text "How do we maintain our records?". A white insert is visible inside the folder, partially obscured by the top flap.

How do we maintain our
records?

Alabama Department of Archives and History

[Home](#)[Education](#)[Museum](#)[Records Management](#)[Research](#)

Retention Schedules (RDAs)

[Local Agencies](#)[Retention Schedules](#)[Records Destruction](#)[Local Government
Records
Commission](#)[Local Government
Deposit Agreement](#)[Repository Database](#)[911 Emergency Communications Districts](#)[PDF](#)[WORD](#)[Archives and Museums](#)[PDF](#)[WORD](#)[Boards of Education](#)[PDF](#)[WORD](#)[County Boards of Registrars](#)[PDF](#)[WORD](#)[County Commissions](#)[PDF](#)[WORD](#)[County Probate Offices](#)[PDF](#)[WORD](#)[County Taxation Offices](#)[PDF](#)[WORD](#)[Emergency Management Agencies](#)[PDF](#)[WORD](#)

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:

- Staff time: \$ ____/hour x ____ hours of staff time = \$ _____
- Copy cost: \$0.____/copy x ____ copies per employee x ____ employees = \$ _____
- Mailing cost: \$ _____
- Total Cost \$ _____

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 are 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)

July 02, 2020

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

A yellow file folder is shown against a black background. A white rectangular label with rounded corners is attached to the top of the folder. The label contains the text "Where can I find help?" in a black, monospaced font. The folder has a tab on the left side and a white piece of paper is visible inside, partially tucked under the label.

Where can I find help?

www.AlabamaSchoolBoards.org

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Thank you for listening!

Jayne Harrell Williams, Esq.
jwilliams@alabamaschoolboards.org
jhwiliams@hillhillcarter.com

