

1 SB237
2 198002-1
3 By Senator Ward
4 RFD: Governmental Affairs
5 First Read: 04-APR-19

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish the Alabama Open
9 Records Act, and would provide a process to provide
10 citizens with better access to public records.

11 This bill would provide procedures for
12 making and responding to requests for access to
13 public records, and would set the fees to be
14 charged for copies.

15 This bill would create the Office of the
16 Public Access Counselor in the Department of
17 Examiners of Public Accounts, and would provide for
18 the appointment of the Public Access Counselor, and
19 would provide for his or her powers and duties.

20 This bill would establish an appeals process
21 and administrative and judicial remedies, and would
22 provide civil penalties for noncompliance.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to public records; to establish the Alabama
2 Open Records Act; to provide a process for access to public
3 records; to provide procedures for making and responding to
4 requests for access; to establish fees; to create the Office
5 of the Public Access Counselor in the Department of Examiners
6 of Public Accounts; to provide for his or her appointment,
7 powers, and duties; to establish an appeals process and
8 provide administrative and judicial remedies; to provide civil
9 penalties for noncompliance; and to repeal Section 36-12-40,
10 Code of Alabama 1975.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited
13 as the Alabama Open Records Act.

14 Section 2. The Legislature finds and declares all of
15 the following:

16 (1) All political power is inherent in the people.

17 (2) It is the public policy of the state that every
18 person is vested with the inherent right to know and be fully
19 informed about the workings of government.

20 (3) Governmental agencies must ensure and facilitate
21 the public's right of access to and review of public records
22 so that they may efficiently and intelligently exercise their
23 inherent political power.

24 (4) All state, county, and municipal records not
25 expressly exempt by state or federal law should be open for
26 public inspection. The duty of all governmental agencies and

1 political subdivisions of the state to provide access to
2 public records should be broadly construed.

3 (5) The Alabama Open Records Act should not create,
4 directly or indirectly, any rights of privacy or any remedies
5 for violation of any rights of privacy; nor should the Alabama
6 Open Records Act, except as the act specifically provides,
7 establish any procedures for protecting any person from
8 release of information contained in public records.

9 (6) The purpose of this act is also to protect and
10 preserve government records belonging to and being property of
11 the state.

12 (7) The privacy interests of individuals are
13 adequately protected in the specific exceptions to the Alabama
14 Open Records Act or in the statutes which authorize, create,
15 or require the records.

16 (8) Except as may be exempted by or required by
17 state or federal law directly pertaining to a particular
18 record or governmental body, governmental bodies should follow
19 the procedures required by the Alabama Open Records Act.

20 Section 3. For the purposes of this act,
21 the following terms shall have the following meanings:

22 (1) COUNSELOR. The Public Access Counselor appointed
23 pursuant to this act.

24 (2) CUSTODIAN. A person designated by a governmental
25 agency to maintain actual possession, custody, or control of
26 government records and who has been given the expressed,
27 implied, or apparent authority from the governmental body or a

1 governmental official to grant or deny a request for access to
2 a government record. If a governmental body has not designated
3 a custodian pursuant to this act, the custodian shall be the
4 governmental official or employee having ultimate executive
5 responsibility for any governmental body that has possession,
6 custody, or control of government records.

7 (3) ELECTRONIC. Relating to technology having
8 electrical, digital, magnetic, wireless, optical,
9 electromagnetic, or similar capabilities.

10 (4) GOVERNMENTAL BODY or AGENCY or PUBLIC BODY or
11 AGENCY. All boards, bodies, and commissions of the executive
12 and legislative departments of the state or its political
13 subdivisions or municipalities which expend or appropriate
14 public funds, all multimember governing bodies of departments,
15 agencies, institutions, and instrumentalities of the executive
16 and legislative departments of the state or its political
17 subdivisions or municipalities, including, without limitation,
18 all corporations and other instrumentalities whose governing
19 boards are comprised of a majority of members who are
20 appointed or elected by the state or its political
21 subdivisions, counties or municipalities, all quasi-judicial
22 bodies of the executive and legislative departments of the
23 state, and all standing, special, or advisory committees or
24 subcommittees of, or appointments by, the body. This term does
25 not include any of the following:

26 a. A legislative party caucus or coalition.

1 b. A state appellate or trial court, except as
2 required by the Constitution of Alabama of 1901, or any
3 organization governed by the rules of the Alabama Supreme
4 Court.

5 c. A voluntary membership association comprised of
6 public employees, counties, municipalities, or their
7 instrumentalities which have not been delegated any
8 legislative or executive functions by the Legislature or the
9 Governor.

10 (5) GOVERNMENTAL EMPLOYEE or PUBLIC EMPLOYEE. Any
11 person employed at the state, county, or municipal levels of
12 government or their instrumentalities, including governmental
13 corporations and authorities, who is paid in whole or in part
14 from state, county, or municipal funds.

15 (6) GOVERNMENTAL OFFICIAL or PUBLIC OFFICIAL. Any
16 person elected to public office, whether or not that person
17 has taken office, by the vote of the people at the state,
18 county, or municipal level of government, or their
19 instrumentalities, including governmental corporations, and
20 any person appointed to a position at the state, county, or
21 municipal level of government, or their instrumentalities,
22 including governmental corporations.

23 (7) GOVERNMENTAL RECORD. Any record received by a
24 governmental official or employee, or made by those persons,
25 while using government space or equipment.

1 (8) PERSON. Any private individual, for-profit, or
2 non-profit business, governmental body, trust, estate, or
3 similar entity.

4 (9) PRIVATE BUSINESS. A proprietorship, corporation,
5 partnership, company, or other entity which conducts any type
6 of legal trade or business in the state which is not a
7 governmental body.

8 (10) PRIVATE INDIVIDUAL. A natural person who is not
9 a governmental official or governmental employee.

10 (11) PUBLIC RECORD. Any of the following:

11 a. A record made or received pursuant to law or
12 ordinance or in connection with the transaction of official
13 business by any governmental agency, including a record that
14 is reasonably necessary to record the business of government
15 and which is not subject to a statutory exemption from
16 disclosure under state law or prevented from disclosure by an
17 applicable federal law.

18 b. A record received by, or maintained on behalf of,
19 a private individual or private business from a governmental
20 agency, governmental employee, or governmental official that
21 is not otherwise subject to a statutory exemption from
22 disclosure under state law or prevented from disclosure by an
23 applicable federal law.

24 (12) RECORD. Information inscribed on a tangible
25 medium that is stored in an electronic or other medium and is
26 retrievable in perceivable form, including all documents,
27 papers, electronic mail, letters, maps, books, tapes, images,

1 videos, films, audio recordings, or other material, regardless
2 of the physical form, characteristics, or means of
3 transmission.

4 (13) REDACT. To obscure, cover, or remove text or
5 information from a record prior to publication or release.

6 (14) REQUESTOR. A person who has made an oral or
7 written request to see a record to the custodian of that
8 record pursuant to this act.

9 Section 4. (a) A person has the right to inspect and
10 take a copy of a public record upon request made in accordance
11 with Section 5.

12 (b) Each governmental body is required to adopt
13 rules regarding its compliance with the Alabama Open Records
14 Act and shall designate a custodian of records.

15 (c) (1) A custodian shall allow a requestor to
16 inspect and take a copy of any public record in accordance
17 with Section 5.

18 (2) A copy of a public record shall be produced to
19 the requestor in the most economical method possible.

20 (3) When hard copies of responsive records are
21 produced, the custodian shall mail the records to the
22 requestor upon prepayment of postage.

23 (d) A custodian shall take all necessary precautions
24 for the preservation and safekeeping of governmental records.

25 Section 5. (a) (1) Public records shall be open to
26 inspection and copying by any person during the regular office
27 hours of the custodian of the public records.

1 (2) The custodian may require the requestor to
2 provide his or her name, and if relevant, an address to where
3 records are to be sent.

4 (b) (1) A request for public records shall identify
5 the requested records with reasonable specificity.

6 (2) The request need not make reference to this act
7 in order to invoke the authority of this act or to impose the
8 time limits for response by the custodian.

9 (3) The request need not be in writing, but in the
10 event of an administrative or judicial challenge of the
11 sufficiency of the response to the request, the requestor
12 shall bear the burden of proof as to the fact that the request
13 was made and as to the date and content of the request.

14 (4) A request may be made on a form as provided in
15 Section 8.

16 (5) The requestor may submit the request by mail or
17 electronic means.

18 (c) A custodian of governmental records, as soon as
19 is practicable, but in all cases within five working days of
20 receiving a request, shall take one of the following actions:

21 (1) Provide the requested records.

22 (2)a. Deny access to the requested records because
23 release of the requested records is prohibited by law.

24 b. The denial response shall meet all of the
25 following requirements:

26 1. Be in writing on a form as provided in Section 8.

1 2. Identify with reasonable particularity the volume
2 and subject matter of withheld records.

3 3. Cite, as to each category of withheld records,
4 the specific state or federal law, which authorizes the
5 withholding of the records.

6 (3)a. Provide in part the requested record and
7 redact the record in part because the release of part of the
8 record is prohibited by law.

9 b. When access to a portion of a requested record is
10 withheld, the custodian may redact only that portion of the
11 record to which an exemption applies and shall release the
12 remainder of the record.

13 c. The response to deny access to a part of the
14 record shall meet all of the following requirements:

15 1. Be in writing on a form as provided in Section 8.

16 2. Identify with reasonable particularity the
17 subject matter of the redacted portions.

18 3. Cite, as to each category of redacted records,
19 the specific state or federal law which authorizes the
20 redaction of the records.

21 (4)a. Specify that it is not practically possible
22 to provide the requested records or to determine whether they
23 are available within the five-workday period.

24 b. This response shall be in writing and specify the
25 conditions that make providing the requested records
26 impossible within five working days.

1 c. It is permissible for the custodian to provide
2 responsive records as they are compiled and become available.

3 d. If a response is made within five working days,
4 the custodian shall have an additional seven working days in
5 which to provide a response in accordance with this
6 subsection.

7 (5) Certify that the requested record does not
8 exist.

9 (6) Certify that the requested record is not within
10 the possession, custody, or control of the custodian to whom
11 the request was directed, and if known, identify the proper
12 custodian of the requested record.

13 (d) (1) A custodian or governmental body may
14 petition the counselor or any circuit court appropriate for
15 the filing of a civil action pursuant to Section 10 for
16 additional time to respond to a request for records when the
17 request is for an extraordinarily large volume of records and
18 a response within the time required by this act will prevent
19 the custodian from meeting his or her operational
20 responsibilities.

21 (2) Before proceeding with the petition, the
22 custodian or governmental body shall make reasonable efforts
23 to reach an agreement with the requestor concerning the
24 production of the records requested.

25 (e) (1) Subject to subsection (e) of Section 7, a
26 custodian or governmental body may not be required to create a
27 new record if the record does not already exist.

1 (2) A custodian or governmental body may abstract or
2 summarize information under the terms and conditions as agreed
3 between the requestor and the custodian or governmental body.

4 (f) Failure by a custodian or governmental body to
5 respond in the time limit specified under this act for records
6 shall be deemed a denial of the request and shall constitute a
7 violation of this act.

8 (g) (1) Public records received or maintained by a
9 private individual or private business in the performance of a
10 service or function for or on behalf of a governmental body
11 shall be subject to disclosure from the custodian of the
12 governmental body to the same extent that the records would be
13 subject to disclosure if received, possessed, or maintained by
14 the custodian.

15 (2) Private individuals having possession of public
16 records in the performance of a service or function for or on
17 behalf of a governmental body which are not in the actual
18 possession of the custodian responsible for the records shall
19 immediately provide the records to the custodian upon request
20 of the custodian.

21 (h) (1) Each governmental body shall adopt and
22 publish or post procedures consistent with this section to be
23 followed in responding to requests for access to inspect and
24 copy public records.

25 (2) The procedures shall provide full access to
26 public records, protect public records from damage and
27 disorganization, prevent excessive disruption of the essential

1 functions of the governmental body, provide assistance and
2 information upon request, and insure efficient and timely
3 action in response to requests for inspection of public
4 records.

5 (i) Each governmental body having possession,
6 custody, or control of a public record shall designate the
7 persons as necessary to carry out the duties of custodian
8 under this act and shall ensure that a custodian, or his or
9 her designee, is available during regular business hours of
10 the governmental body to carry out the duties.

11 (j) Each governmental body shall provide, upon
12 request of any person, all of the following information:

13 (1) The principal office of the governmental body
14 and its regular office hours.

15 (2) The title and address of the custodian of the
16 records of the governmental body and of any other governmental
17 employee who is ordinarily available to act on requests made
18 at the location where public records can be viewed.

19 (3) The fees, if any, charged for access to or
20 copies of the public records of the governmental body.

21 (4)a. The written procedures to be followed in
22 requesting access to and obtaining copies of the public
23 records of the governmental body.

24 b. The procedures cannot limit requests for public
25 records to those made in person.

26 c. The procedures shall be easily accessible to the
27 public on the official website of the governmental body and at

1 all public offices of the governmental body issuing the
2 procedures.

3 Section 6. (a) (1) A person may view a public record
4 at no charge.

5 (2) For the protection of original government
6 records, custodians may provide copies of public records for
7 review by persons at no charge or impose restrictions on the
8 ability of persons to handle or damage original government
9 records.

10 (3) A person may not be prohibited from using his or
11 her own equipment to photograph, electronically scan, or make
12 copies of public records at his or her own expense unless the
13 arrangements could reasonably be expected to cause damage to
14 original government records.

15 (4) A custodian shall be authorized and encouraged
16 to provide copies of public records for a person requesting
17 them without charge.

18 (b) (1) A custodian or governmental body may make
19 reasonable charges, not to exceed the actual cost, incurred in
20 accessing, duplicating, or supplying requested records.

21 (2) No custodian or governmental body may impose any
22 extraneous, intermediary, or surplus fees or expenses to
23 recoup the general costs or overhead associated with creating
24 or maintaining government records or transacting the general
25 business of the custodian or governmental body upon a person
26 requesting public records.

1 (c) (1) Any duplicating fee charged by a custodian or
2 governmental body may not exceed the actual cost of
3 duplication.

4 (2) A per page charge of ten cents (\$0.10) or less
5 for copying non-electronic records sized eight and one-half
6 inches by 11 inches or eight and one-half inches by 14 inches
7 in a black and white format shall be considered prima facie
8 reasonable unless the requestor can provide substantial
9 evidence that the actual cost was more than five cents (\$0.05)
10 less than the amount charged.

11 (3) A custodian may charge up to fifteen cents
12 (\$0.15) per page for two-sided copies.

13 (4) A per page charge of fifty cents (\$0.50) or less
14 for copying non-electronic records sized eight and one-half
15 inches by 11 inches or eight and one-half inches by 14 inches
16 in a color format shall be considered prima facie reasonable
17 unless the requestor can provide substantial evidence that the
18 actual cost per page was more than twenty cents (\$0.20) less
19 than the amount charged.

20 (d) (1) A custodian or governmental body may also
21 make a reasonable charge for the cost incurred in supplying
22 records produced from a geographic information system at the
23 request of anyone other than the owner of the land that is the
24 subject of the request.

25 (2) The charges may not exceed the actual cost to
26 the custodian or governmental body in supplying the records,
27 except that the custodian or governmental body may charge, on

1 a pro rata per acre basis, for the cost of creating
2 topographical maps developed by the custodian or governmental
3 body, for the maps or portions thereof, which encompass a
4 contiguous area greater than 50 acres.

5 (e) (1) If the charge for copies of public records
6 will exceed the per page charges which are prima facie
7 reasonable as set forth in subsection (c), then the charge for
8 supplying the requested records shall be estimated by the
9 custodian and communicated to the requestor no later than 24
10 hours in advance of the deadline for the custodian to respond
11 to the request.

12 (2) If the estimation is not communicated as
13 required, the custodian may not charge more than the charges
14 set forth in subsection (c).

15 (f) (1) In any case where a custodian or governmental
16 body determines in advance that charges for producing the
17 requested records are likely to exceed two hundred dollars
18 (\$200), the custodian or governmental body, before continuing
19 to process the request, may require the requestor to agree to
20 payment of a deposit not to exceed the amount of the advance
21 determination.

22 (2) The deposit shall be credited toward the final
23 cost of supplying the requested records.

24 (3) The period within which the custodian or
25 governmental body shall respond under this subsection shall be
26 tolled for the amount of time that elapses between notice of
27 the advance determination and the response of the requestor.

1 (g) Before processing a request for records, a
2 custodian or governmental body may require the requestor to
3 pay any amounts owed to the custodian or governmental body for
4 previous requests for records that remain unpaid 30 days or
5 more after billing.

6 (h) Unless otherwise expressly authorized by law,
7 when requested to provide a certified copy of a public record,
8 a governmental agency may charge up to one dollar (\$1) per
9 copy for the first 10 pages, fifty cents (\$0.50) for the next
10 90 pages of the same record, and twenty-five cents (\$0.25) for
11 any additional certified copies of the same record.

12 Section 7. (a) (1) Public records maintained by a
13 custodian or governmental body in an electronic data
14 processing system, computer database, or any other structured
15 collection of data shall be made available to a requestor at a
16 reasonable cost, not to exceed the actual cost in accordance
17 with subsection (c) of Section 6.

18 (2) If the records are produced in electronic
19 format, then the cost shall not exceed one cent (\$0.01) per
20 page.

21 (b) (1) A custodian or governmental body shall
22 produce public records maintained in an electronic database in
23 any tangible medium identified by the requestor, which may
24 include, where the custodian or governmental body has the
25 capability, the option of posting the records on a website or
26 delivering the records through an electronic mail address
27 provided by the requestor, if that medium is used by the

1 custodian or governmental body in the regular course of
2 business.

3 (2) A custodian or governmental body may not be
4 required to produce records from an electronic database in a
5 format not regularly used by the custodian or governmental
6 body.

7 (3) Disclosure pursuant to subdivision (2) shall be
8 produced in the native format of the records.

9 (c) The custodian or governmental body shall make
10 reasonable efforts to provide records in any format under the
11 terms and conditions as agreed with the requestor, including
12 the payment of reasonable costs.

13 (d) The running of a query or excision of exempt
14 fields of information from a database or the conversion of
15 data from one available format to another may not be
16 considered the creation, preparation, or compilation of a new
17 public record.

18 (e) (1) Every governmental body shall compile and
19 annually update a database index, which is an index of
20 computer databases, that at a minimum, contains those
21 databases created by the governmental body on or after July 1,
22 1997.

23 (2) The database index shall be a public record, and
24 at a minimum, shall include all of the following information
25 with respect to each database listed therein:

26 a. A list of data fields.

27 b. A description of the format or record layout.

1 c. The date last updated.

2 d. A list of any data fields to which public access
3 is restricted.

4 e. A description of each format in which the
5 database can be copied or reproduced using the computer
6 facilities of the public body.

7 f. A schedule of fees for the production of copies
8 in each available form.

9 g. The form, context, language, and guidelines for
10 the indices and the databases to be indexed shall be developed
11 by the State Records Commission in consultation with the
12 Director of the Alabama Public Library Service and the
13 Director of the Department of Archives and History.

14 (3) A custodian or governmental body may not be
15 required to disclose its software security, including
16 passwords.

17 (4) For the purposes of this subsection, computer
18 database means a structured collection of data or records
19 residing in a computer.

20 (f) When designing or acquiring an electronic record
21 keeping system, a governmental agency shall consider whether
22 the system is capable of providing data in some common format,
23 including, but not limited to, portable data format, comma
24 separated values, or the American Standard Code for
25 Information Interchange.

26 (g) A governmental agency may not enter into a
27 contract for the creation or maintenance of a public records

1 database if that contract impairs the ability of the public to
2 inspect or copy public records of the agency.

3 (h) Subject to restrictions of copyright and trade
4 secret laws and public records exemptions to disclosure,
5 agency use of proprietary software may not diminish the right
6 of the public to inspect and copy a public record.

7 Section 8. (a) A governmental body shall make
8 available online and upon written or oral request a sample
9 records request form in substantially the following format:

10 SAMPLE RECORDS REQUEST FORM

11 Date of Request: _____

12 ___ Copy Requested

13 ___ Record To Be Reviewed On Site

14 Public Body/Agency/Department _____

15 Requestor Information:

16 Name: _____

17 Address: _____

18 Phone: _____

19 Email: _____

20 Preferred Contact Method: _____

21 Preferred Delivery Method: _____

22 List of Records Requested:

23 Optional: Any additional information you may wish to
24 provide that might expedite this process (case number, code
25 section):

26 _____
27 _____

1 Requestor Signature: _____
2 Print Name: _____
3 Received By:
4 Name: _____
5 Signature: _____
6 Date: _____

7 (b) A public body shall utilize a sample records
8 response form in substantially the following format:

9 SAMPLE RECORDS RESPONSE FORM

10 Name of Requestor: _____
11 Date of Request: _____
12 Record Requested: _____
13 Date of Determination/Response: _____

14 METHOD OF REQUEST:

- 15 In Person
- 16 Email
- 17 Mail
- 18 Phone
- 19 Fax

20 METHOD OF RESPONSE:

- 21 In Person
- 22 Email
- 23 Phone
- 24 Fax

25 The office of _____ makes the
26 following determination/response to the above referenced
27 records request:

1 ___ The record is provided to the requestor.

2 ___ The record is entirely withheld because the
3 release of the records is prohibited by law. Responder must
4 cite specific code section as to each category of withheld
5 record.

6 ___ The record is provided in part and withheld in
7 part because the release of part of the record is prohibited
8 by law. Responder must cite specific code section as to each
9 category of withheld record.

10 ___ It is not practically possible to provide the
11 requested records or to determine whether the records are
12 available within the five-workday period. Responder must cite
13 conditions that make response impossible. If response is made
14 within five working days, the public body will have an
15 additional seven days in which to provide one of the three
16 preceding responses.

17 ___ I certify that the requested record does not
18 exist.

19 ___ I certify that I do not have possession,
20 custody, or control over the requested record.

21 Determination/Response made by:

22 Print Name and Title: _____

23 Signature: _____

24 Section 9. (a) There shall be an Office of Public
25 Access Counselor established in the Department of Examiners of
26 Public Accounts.

1 (1) The office shall be administered by the
2 counselor.

3 (2) The Department of Examiners of Public Accounts
4 shall designate a person to serve as the counselor at a salary
5 to be fixed by the Chief Examiner.

6 (b) The counselor shall have all of the following
7 powers and duties:

8 (1) To conduct research.

9 (2) To prepare interpretive and educational
10 materials and programs in cooperation with the Office of the
11 Attorney General.

12 (3) To distribute to newly elected or appointed
13 public officials the Alabama Open Records Act and educational
14 materials concerning the act.

15 (4) To respond to informal inquiries made by
16 requestors by telephone, in writing, in person, by facsimile,
17 or by electronic mail concerning the Alabama Open Records Act.

18 (5) To grant or deny requests from custodians for
19 extensions of time to respond to a request for records
20 pursuant to subsection (d) of Section 5.

21 (6)a. To issue advisory opinions to interpret the
22 Alabama Open Records Act upon the request of a requestor of
23 records.

24 b. The counselor shall confer with the Attorney
25 General prior to issuance of any advisory opinions about the
26 requests, but the counselor may not issue an advisory opinion

1 concerning a specific matter with respect to which an
2 administrative appeal or lawsuit has been filed.

3 (7) The counselor shall be authorized to issue
4 formal administrative findings relating to disputes between
5 requestors and public bodies concerning requests for records.

6 (c) (1) Custodians electing to request an extension
7 of time to respond pursuant to subsection (d) of Section 5
8 shall attach the request with a short and plain statement of
9 why an extension is needed and the amount of time requested.

10 (2) The counselor may order the requestor to respond
11 to the request or issue a response without requiring a
12 response from the requestor.

13 (3) The counselor shall issue a written response to
14 any request from a custodian within five business days of
15 receipt of the request, or if one was ordered, receipt of the
16 response of the requestor of the records.

17 (d) (1) Any requestor constructively or expressly
18 denied the right to inspect or copy records by a custodian
19 under subsection (c) of Section 5 may appeal the denial to the
20 counselor by filing a notice of appeal with the counselor.

21 (2) The filing of an administrative appeal is not a
22 prerequisite to filing a civil action pursuant to Section 10.

23 (3) A notice of appeal to the counselor shall be
24 filed within 30 days after the denial by the custodian.

25 (4) For the purposes of this subsection, the notice
26 of appeal shall be deemed to be filed on the date it is
27 received by the counselor or on the date it is postmarked, if

1 received more than 30 days after the date of the denial from
2 which the appeal is taken.

3 (e) A notice of appeal shall contain all of the
4 following:

5 (1) A filing fee of one hundred dollars (\$100) or an
6 accompanying affidavit of substantial hardship.

7 (2) A copy of the written record request submitted
8 to the custodian by the requestor, or if the request was made
9 orally, the time, date, and manner of the request and the
10 agency employee upon whom the request was made.

11 (3) A copy of the written response provided by the
12 custodian, or if no response was made, a statement that no
13 response was provided by the custodian.

14 (4) A short and plain statement of the relief sought
15 by the requestor.

16 (5) A certificate showing service of the appeal and
17 a copy of all the documents submitted was sent to the
18 custodian who denied the request, in whole or in part.

19 (f) Within five business days of receipt of a
20 properly documented appeal accompanied by the requisite filing
21 fee, the counselor shall either dismiss the appeal as having
22 no merit or issue a ruling requiring the custodian to respond
23 to the appeal within 10 business days.

24 (g) If the counselor orders a response from the
25 custodian, the custodian shall file with the counselor within
26 10 business days a response containing all of the following:

1 (1)a. Copies of a representative sample of the
2 records requested without redaction.

3 b. Copies of these records shall not be served upon
4 the requestor filing the appeal.

5 (2) Copies of a representative sample of the records
6 requested as provided to the requestor, if any.

7 (3) A statement as to why the request should not be
8 granted.

9 (4) A certificate showing that the custodian has
10 served a copy of the statement as to why the request should
11 not be granted upon the requestor.

12 (h) If a custodian does not respond as required, the
13 counselor shall order the records produced as requested in the
14 appeal and require the custodian to pay one hundred dollars
15 (\$100) to the requestor.

16 (i) Within five business days of receipt of a timely
17 response of the custodian, the counselor shall issue a written
18 ruling regarding the request, which shall be binding upon the
19 custodian and requestor, unless a timely appeal of the ruling
20 is filed as set forth in this section.

21 (j) If the counselor rules that any public record or
22 portion of a public record was improperly withheld, the
23 counselor shall order the custodian to pay one hundred dollars
24 (\$100) to the requestor.

25 (k) If the counselor denies any relief to the
26 requestor, then the requestor shall bear its own costs of the
27 appeal.

1 (l) The requestor or custodian may appeal the
2 administrative decision of the counselor by filing a notice of
3 appeal with the counselor within 10 business days of receipt
4 of the written ruling of the counselor.

5 (m) To perfect the appeal, the requestor or
6 custodian must file a civil action pursuant to Section 10
7 within 30 days of the date of the issuance of the decision of
8 the counselor.

9 (n) The proceedings in circuit court shall be de
10 novo.

11 (o) The counselor may not be included as a party to
12 the circuit court proceedings unless the counselor petitions
13 to participate as amicus curiae and the petition is granted by
14 the circuit court.

15 (p) If no appeal is filed, then the decision of the
16 counselor shall be final and binding upon the requestor and
17 the custodian.

18 Section 10. (a) Any requestor may enforce this act
19 and any custodian or requestor may appeal an adverse decision
20 by the counselor issued pursuant to Section 9 by filing a
21 civil complaint in a circuit court in the judicial circuit in
22 which the records in question were situated, where the alleged
23 violation of this act occurred, or in the circuit court of
24 Montgomery County.

25 (b) The complaint shall be verified and shall allege
26 with reasonable specificity the circumstances of the denial of
27 rights and privileges conferred by this act, or if an appeal

1 from an administrative decision by the counselor, allege with
2 reasonable specificity the reasons the decision of the
3 counselor should be reversed.

4 (c) If the complaint alleges the wrongful
5 withholding of a public record, the complaint shall also
6 include a copy of the request for the record in controversy or
7 a declaration of the requestor making an oral request, a copy
8 of the response of the custodian, if a response was received,
9 and any decision of the counselor, if an administrative appeal
10 was sought.

11 (d) If an administrative appeal was sought with the
12 counselor, the appeal shall include a copy of the decision of
13 the counselor.

14 (e) The court shall make a preliminary determination
15 of whether the complaint raises a sufficient reason to believe
16 a violation of this act may have occurred.

17 (f) If the court determines the complaint fails to
18 raise a sufficient reason to believe a violation of this act
19 may have occurred, the court shall dismiss the complaint.

20 (g) If the court determines the complaint of the
21 requestor raises a sufficient reason to believe a violation of
22 this act may have occurred, the court shall order the
23 custodian to file an answer and raise all defenses within 14
24 days.

25 (h) If the court determines that the complaint of
26 the custodian raises a sufficient reason to believe a
27 violation of this act may have occurred, the burden rests upon

1 the custodian to sustain his or her action, and the circuit
2 court shall review the matter de novo.

3 (i) (1) The circuit court may review any record in
4 controversy in camera.

5 (2) The circuit court may permit the parties to
6 engage in discovery pursuant to the Alabama Rules of Civil
7 Procedure.

8 (j) (1) The circuit court may order either party to
9 notify a private individual, a private business, a
10 governmental employee, or a governmental official whose name
11 appears in the requested records of the filing of the suit.

12 (2) Any entity shall have standing to intervene in
13 any suit regarding a request for records to argue and present
14 evidence for or against the release of the requested records.

15 (k) If the court determines that a record was
16 properly withheld under this act, the contents of the record
17 may not be disclosed or utilized in any other legal proceeding
18 by any individual or attorney who attends the in camera
19 portion of the proceedings.

20 (l) The circuit court shall have jurisdiction to
21 enjoin a custodian or a governmental body from withholding
22 records, to order the disclosure of a record, and to grant any
23 other equitable relief as may be appropriate.

24 (m) (1) The circuit court shall impose a civil
25 penalty against the custodian of a record who is determined to
26 have failed to respond to a record request or intentionally
27 withheld a public record without reasonable justification.

1 (2) For the purposes of this section, reasonable
2 justification shall include, but not be limited to, a good
3 faith reliance on any currently operative state law, an
4 opinion of the Attorney General, or an advisory or formal
5 decision of the Public Access Counselor.

6 (3) Reasonable justification may not include that
7 the decision to withhold a record was made by an employee of
8 the custodian instead of the custodian.

9 (n) The following civil penalties shall apply:

10 (1) Not less than seventy-five dollars (\$75) per day
11 from the date the public record should have been provided to
12 the requestor.

13 (2) Not more than one thousand five hundred dollars
14 (\$1,500) for the first violation of this act without
15 reasonable justification in the prior two-year period.

16 (3) Not more than three thousand dollars (\$3,000)
17 for a second violation of this act without reasonable
18 justification in the prior two-year period.

19 (4) Not more than three thousand five hundred
20 dollars (\$3,500) for each additional violation of this act
21 without reasonable justification in the prior two-year period.

22 (o) Penalties imposed against a custodian of the
23 requested public record who is an employee of a governmental
24 body shall neither be paid by the governmental body he or she
25 serves nor reimbursed to the custodian by the governmental
26 body he or she serves.

1 (p) All civil penalties imposed under this act shall
2 be placed in the state General Fund for the purpose of funding
3 the office of the Public Access Counselor established in
4 Section 9.

5 (q) (1) If a requestor or custodian challenges a
6 written order of the counselor made pursuant to the
7 administrative appeal procedure established in Section 9, and
8 a circuit court substantially affirms the ruling of the
9 counselor in an appeal proceeding pursuant to this act, then
10 the circuit court shall award the prevailing party reasonable
11 attorneys' fees and costs.

12 (2) Requests by either party for the reimbursement
13 of costs or attorneys' fees incurred during proceedings
14 initiated under Section 10 shall be governed by the Alabama
15 Litigation Accountability Act, Article 6, Chapter 19, Title
16 12, Code of Alabama 1975, except that the term defense as
17 defined in Section 12-19-271, Code of Alabama 1975, shall
18 include the reason given by the custodian for withholding the
19 record in question.

20 (3) A governmental body may pay for or provide for
21 the legal expenses of the custodian of the record in a
22 proceeding initiated under this act, and the governmental body
23 may pay for or reimburse any costs or fees owed to the
24 plaintiff under this act.

25 (r) (1) Except as to cases the court considers of
26 greater importance, proceedings initiated under this act shall

1 be given precedence over all other cases in the circuit and
2 appellate courts.

3 (2) All hearings, trials, and oral arguments in
4 proceedings initiated under this act shall be assigned for the
5 earliest practicable date.

6 (s) A complaint filed pursuant to this section not
7 based upon an appeal of an administrative ruling of the
8 counselor shall be brought within 60 days of the date that a
9 custodian issues a written denial of all or a portion of a
10 request for records or the date the request is deemed denied
11 by a custodian's failure to respond to a request made pursuant
12 to this act.

13 Section 11. In addition to any existing immunity
14 that may apply, the counselor and any custodian, governmental
15 employee, or governmental official, who, acting upon a good
16 faith belief that the document was a public record, produces
17 any record upon the request of a person, or gives an informal
18 or formal opinion that the records be produced, shall have an
19 absolute immunity from civil liability relating to the
20 publication of any defamatory statements or invasions of
21 privacy contained in the records produced which were not
22 authored by the counselor, custodian, public employee, or
23 public official providing the record, even if it is later
24 determined administratively or judicially that the record was
25 not a public record.

26 Section 12. Section 36-12-40, Code of Alabama 1975,
27 is expressly repealed. All specific references in the Code of

1 Alabama 1975, to Section 36-12-40, Code of Alabama 1975, shall
2 be considered a reference to this act, and where expressly
3 excluded or included from application of Section 36-12-40,
4 Code of Alabama 1975, the exclusion or inclusion from
5 application shall remain as it applies to this act.

6 Section 13. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.