SB270

3QAGEZV-1

By Senator Orr

RFD: County and Municipal Government

First Read: 02-Apr-24

SYNOPSIS:

Under existing law, citizens have the right to inspect and obtain a copy of public records of the state, within certain parameters.

This bill would establish procedures for requesting and obtaining public records.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL

TO BE ENTITLED

AN ACT

Relating to public records; to amend Sections 36-12-40 and 36-12-41, Code of Alabama 1975, and to add Sections 36-12-43, 36-12-44, and 36-12-45 to the Code of Alabama 1975, to establish procedures for requesting and obtaining public records; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 36-12-40 and 36-12-41 of the Code of Alabama 1975, are amended to read as follows:

"§36-12-40

(a) Every citizen has a right to inspect and take a copy of any public ~~writing~~ record of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school, or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure, ~~(~~as defined at 42 U.S.C. § 5195c(e), ~~as amended)~~ and critical energy infrastructure information, ~~(~~as defined at 18 C.F.R. § 388.113(c)(1), ~~as amended)~~ the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to

public safety or welfare that could reasonably be expected from public disclosure on the records.

(b) For purposes of this article, the judicial branch of state government and any office identified in Article VI of the Constitution of Alabama of 2022, are exempted from the requirements of Sections 36-12-43 through 36-12-45."

"§36-12-41

Every public officer having ~~the~~ custody of a public ~~writing which~~ record that a citizen has a right to inspect ~~is bound to give him~~shall provide him or her, on proper demand, with a certified copy of ~~it~~ the public record, on payment of ~~the legal fees therefor~~a reasonable fee, as further provided in this article, and ~~such~~ the copy ~~is~~shall be admissible as evidence in like cases and with like effect as the original ~~writing~~record."

Section 2. Sections 36-12-43, 36-12-44, and 36-12-45 are added to the Code of Alabama 1975, to read as follows:

§36-12-43

(a) It is the policy of the state to promptly provide citizens with the opportunity to inspect public records and to request a copy, subject to payment of reasonable fees and to applicable legal protections for sensitive information, and to the interest of the general public in having the business of government carried on efficiently and without undue interference.

(b) For purposes of this article, the following terms shall have the following meanings:

(1) BUSINESS DAY. A day that the public officer's

office is open to the public and conducting normal operations.

(2) PUBLIC OFFICER. A public officer or his or her designee responsible for responding to public records requests.

(3) STANDARD REQUEST. A public-records request that seeks one or more specifically and discretely identified public records that the public officer determines would take less than eight hours of staff time to process considering the time needed to identify and retrieve any responsive records and to redact or take other measures to withhold legally protected information. A standard request should require no or minimal clarification by the requester.

(4) SUBSTANTIVE RESPONSE. A response to a public-records request that sets forth the public officer's ultimate position on the substance of the request. The term includes, but is not limited to, the following, in whole or in part:

a. A statement that the public records are provided as attached or enclosed.

b. A statement that access to the requested public records will be provided at a set time, place, and location during regular business hours or at a time, place, and location mutually agreeable to the public officer and the requester.

c. A statement that the public officer is prepared to provide the requested public records to the requester upon payment of a reasonable fee.

d. A statement the requested records do not exist.

e. A statement that denies the request with reasons stated therefor.

f. A statement that denies the request on the grounds the public officer is not the custodian of the requested public record and, if known to the public officer, identifies the custodian.

g. A statement that denies the request for failure to substantially complete a standard request form.

h. A statement that denies the request for failure to substantially comply with the written procedures established by the public officer for such request and provides instructions for compliance or a reasonable alternative for substantial compliance if the requester has provided a reasonable basis for which compliance with the established procedure is unduly burdensome, impractical, or impossible to the requester.

(5) TIME-INTENSIVE REQUEST. A public-records request that the public officer determines would take more than eight hours of staff time to process considering the time needed to identify and retrieve any responsive records and any time needed to redact or take other measures to withhold legally protected information.

(c) This article is not intended to, and does not, change or in any way affect any protections for sensitive or other nonpublic information provided under applicable law.

§36-12-44

(a) A public officer shall respond to a standard request subject to each of the following provisions:

(1) The public officer may, but need not, require the requester to submit his or her request using a standard request form.

(2) The public officer shall acknowledge the request within 10 business days of receiving it.

(3) The public officer shall provide a substantive response fulfilling or denying the request within 15 business days of acknowledging receipt. Although the public officer may extend this period in 15-business-day increments upon written notice to the requester, the public officer should process a standard request as expeditiously as possible considering the requester's time constraints, the public officer's workload, and the nature of the request.

(4) The requester shall have standing to file suit to enforce this article if either of the following occurs:

a. A substantive response is not provided to the standard request within the earlier of 30 business days or 60 calendar days following acknowledgment of receipt by the public officer.

b. The public records are not produced within the earlier of 30 business days or 60 calendar days following the payment of the estimated fees to the public officer.

c. A substantive response denies a request in whole or in part.

(b) A public officer shall respond to a time-intensive request subject to each of the following provisions:

(1) The public officer shall require the requester to submit his or her request using a standard request form.

(2) The public officer shall require the requester to pay a reasonable fee before the requester may receive the public records.

(3) The public officer shall acknowledge the request within ten business days of receiving it.

(4) The public officer shall notify the requester within 15 business days after acknowledging receipt that the request qualifies as a time-intensive request. At that time, the public officer shall notify the requester of any likely fees and allow the requester to withdraw the time-intensive request and submit a new request that is not a time-intensive request. If the requester elects to proceed with a time-intensive request, the public officer shall provide a substantive response fulfilling or denying the request within 45 business days after the requester elected to proceed with his or her time-intensive request. The public officer may extend this period in 45-business-day increments by notifying the requester in writing.

(5) At or around the time of designating the request as time-intensive, the public officer shall make a record in a log maintained for keeping track of currently pending time-intensive requests. For each such currently pending request, the log shall identify the name of the requester, the general subject matter of the request, and the date of acknowledgment pursuant to subsection (b)(3).

(6) The requester shall have standing to file suit to enforce this article if either of the following occurs:

a. A substantive response is not provided within the

earlier of 180 business days or 270 calendar days following the requester's election to proceed with a time-intensive request.

b. The records are not produced within the earlier of 180 business days or 270 calendar days following the payment of the estimated fees to the public officer.

c. A substantive response denies a request in whole or in part.

(c) A public officer shall not be obligated to respond to a public-records request that is vague, ambiguous, overly broad, or unreasonable in scope; provided, if the public officer chooses to respond to such a request by seeking clarification from the requester concerning the scope of the request, the timelines established in this section shall restart once the public officer receives the requested clarification from the requester.

(d) A public officer shall not be required to create a new public record if the requested record does not already exist.

(e) Nothing in this section shall be construed to prohibit a public officer from processing a public-records request in a manner that is less expensive or more prompt from the perspective of the requester.

§36-12-45

(a)(1) A citizen may request access to a public record by following the written procedures for accepting such requests established by the public officer having custody of the public record. The written procedures may establish any of

the following:

a. A standard request form for use in submitting a public-records request.

b. A designee, such as a public-records coordinator, to whom a public-records request shall be addressed.

c. The permissible method or methods of transmitting a public-records request.

d. Any other policies pertaining to the process for submitting a public-records request.

(2) The public officer shall make his or her written procedures concerning public records reasonably available to the public.

(3) A public officer shall not be obligated to respond to a public-records request that is not made pursuant to the public officer's written procedures.

(4) Written procedures need not be adopted as administrative rules pursuant to the Alabama Administrative Procedure Act.

(b) In the absence of written procedures to the contrary, each of the following shall apply:

(1) A citizen may submit a public-records request by delivering the request by hand or by mailing the request to the main office or principal place of business of the public officer having custody of the public record.

(2) Receipt of a hand-delivered public-records request occurs when the request is received at the public officer's main office or principal place of business. Receipt of a mailed public-records request occurs on the date of actual

receipt by the public officer. A certified mail receipt or similar signed postage receipt shall be prima facie evidence of receipt by the public officer.

(3) The standard request form shall read substantially as follows:

"Requester's contact information:

Name:_____

Phone number:_____

Email address:_____

Street address:_____

_____

_____

Agency you are requesting public records from:

_____

Date of request:_____

Records requested: (Be as specific as possible. A public officer shall not be obligated to respond to a request that is vague, ambiguous, overly broad, or unreasonable in scope. Additionally, extensive requests for public records may increase the fees to cover the administrative cost of searching and copying the requested records.)

_____

_____

_____

_____

Payment of fees may be required before your request is fulfilled."

Section 3. This act shall become effective on October 1, 2024.