

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H3/14/17 H3/16/17 H3/23/17 H3/30/17*

91st General Assembly

A Bill

Regular Session, 2017

HOUSE BILL 1946

By: Representatives Tucker, *Ballinger*

By: Senator Bond

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING ACCESS TO PUBLIC INFORMATION; TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING ACCESS TO PUBLIC INFORMATION; AND TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 25, Chapter 19, Subchapter 1, is amended to add an additional section to read as follows:

25-19-111. Review panel – Creation.

(a) There is created a review panel to conduct independent and unbiased reviews of requests for records under this chapter.

(b)(1)(A) The panel shall consist of three (3) members who are:

(i) Residents of this state; and

(ii) Knowledgeable in matters concerning the Freedom of Information Act of 1967, § 25-19-101 et seq.

(B) One (1) member of the panel shall be an attorney who is licensed to practice law in this state.

(C) One (1) member of the panel shall be an attorney who:

(i) Teaches or has taught at a law school in this state; and

(ii) Is licensed to practice law in any state in the



United States or in the District of Columbia.

(D) One (1) member of the panel shall be a former custodian of records who has experience responding to requests for information under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) The members of the panel shall be appointed in the following manner:

(A) One (1) member of the panel shall be appointed by the Speaker of the House of Representatives;

(B) One (1) member of the panel shall be appointed by the Governor; and

(C) One (1) member of the panel shall be appointed by the President Pro Tempore of the Senate.

(3) An action by the panel may be taken upon two (2) concurring votes of the members of the panel.

(c)(1) Each member of the panel shall serve staggered six-year terms.

(2) A vacancy on the panel shall be filled in the manner of the original appointment.

(3) A member of the panel may be reappointed to a successive term or terms or to fill another vacancy on the panel.

(d)(1)(A) The review of the panel shall be conducted in private.

(B)(i)(a) If the panel decides that the record or records in question, in whole or in part, shall remain confidential and not be subject to public disclosure, the review by the panel is not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The panel may make a decision as to a portion of the record or records in question and the confidentiality of the record or records in question.

(c) The panel may determine that confidential information is so intertwined with the record or records in question that it renders the entire record or records in question confidential and not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(ii) A member of the panel shall not disclose any information related to the record or records in question under subdivision (d)(1)(B)(i) of this section that is learned by the member of the panel due to his or her service on the panel.

(iii) However, subdivision (d)(1)(B)(ii) of this section shall not apply to information related to the record or records in question that is learned by the member of the panel from another source other than his or her service on the panel.

(2) The meetings of the panel may be conducted telephonically.

(e)(1)(A)(i) A requestor of records under this chapter may ask the panel to review a request for records that was denied by the custodian of the records.

"(ii) A review by the panel shall be de novo.

(iii) This section does not interfere with the right of a resident of this state to pursue a claim in court under § 25-19-107."

(iv)(a) The panel may, in its discretion, deny a request for a review by the panel under subdivision (e)(1)(A)(i) of this section or under subdivision (f)(1) of this section.

(b) If the panel denies a request for a review by the panel under subdivision (e)(1)(A)(iv)(a) of this section, the panel shall send notification of its decision to the party who made the request for a review by the panel.

(B)(i) A requestor under subdivision (e)(1)(A) of this section may submit his or her request for review to the panel regardless of whether the requestor is also pursuing an appeal under § 25-19-107.

(ii) A review of the request for records by the panel shall be considered separate from any pending matter before a court, and the decision and process of review by the panel has no bearing on the pace or outcome of a judicial remedy.

(2) A custodian shall submit the records in question to the panel and for each record in question shall supply the authority under the Freedom of Information Act of 1967, § 25-19-101 et seq., that is the basis of the custodian's refusal to supply the records in question.

(f)(1) A custodian may ask for a decision from the panel concerning an original request for records, but this does not place a burden on the panel to comply with the time period under § 25-19-105.

(2) If the panel cannot render a decision within the timeframe under § 25-19-105, the custodian shall still comply with the time period under § 25-19-105.

(g)(1)(A) The panel may make rules that specify what facts and

arguments the custodian and the requestor shall bring to the panel regarding the records in question.

(B) Rules promulgated by the panel are exempt from the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The rules under subdivision (g)(1) of this section are binding and shall be enforced by the panel.

(h) The panel shall follow governing law under the Freedom of Information Act of 1967, § 25-19-101 et seq., and the law applied by courts in this state in conducting reviews requested under this section.

(i)(1)(A) A decision of the panel shall be final and binding, unless the decision of the panel is appealed to a court.

(B)(i) Either the requestor or the custodian may appeal the decision of the panel.

(ii) A member of the panel who is an attorney is prohibited from representing either the requestor or the custodian in an appeal.

(C) If the requester appeals the decision of the panel, the appeal shall be pursuant to the provisions of § 25-19-107.

(D)(i)(a) If the custodian appeals the decision of the panel the custodian shall provide written notice to the panel within three (3) days after the day the panel issues the decision.

(b) If the third day after the panel issues its decision is a Saturday, Sunday, or legal holiday, then the custodian shall provide notice by the close of the next business day.

(ii)(a) The custodian may appeal the decision to the Pulaski County Circuit Court or to any of the circuit courts of the judicial districts where 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 custodian, 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 custodian, and to hear and determine the case.

(c) A party that refuses to comply with the orders of the court shall be found guilty of contempt of court.

(E) If the custodian does not appeal a decision of the

panel requiring disclosure of public records, then the custodian shall comply with the decision of the panel.

(2) A decision of the panel that is appealed shall be reviewed by a court de novo.

(3) A conflict between a decision of the panel and a decision of a court shall be resolved in favor of the decision by the court.

(j)(1) If the panel decides that the record or records in question before the panel shall become public, then the record or records shall become public on the first business day after the expiration of the custodian's time period to provide notice to the panel of an appeal to a court under subdivision (i)(1)(D)(i) of this section, unless the decision is appealed by the custodian under subdivision (i)(1)(D)(ii) of this section.

(2) If the decision of the panel is appealed by the custodian, the record or records under subdivision (j)(1) of this section shall become public within ten (10) business days after the day the panel issues its decision unless a court rules otherwise.

(k) A custodian who denies a request under this chapter shall advise the requestor of the option to:

(1) Seek review by the panel under this section; and

(2) Appeal the decision of the custodian under § 25-19-107.

(1)(1) A member of the panel is not subject to personal liability due to his or her participation on the panel.

(2)(A)(i) A requestor or a custodian under this section may request that a member of the panel recuse himself or herself from a review by the panel if circumstances exist that would create a conflict between the member of the panel and the requestor or the custodian.

(ii) A member of the panel who is a law professor under subdivision (b)(1)(C) of this section shall recuse himself or herself from a review if the custodian is an institution where the panel attorney is currently employed or was previously employed.

(iii) A member of the panel shall recuse himself or herself from a review by the panel if the custodian is an entity where the member of the panel is currently employed or was previously employed, or if the member of the panel has an ongoing pecuniary interest in or relationship with the entity.

(B) If a member of the panel recuses himself or herself

from a review by the panel under subdivision (1)(2)(A) of this section, a qualified person shall be appointed in the same manner as the original appointment of the member of the panel that recused himself or herself from a review by the panel.

(m) The three (3) members of the panel may each receive a stipend of up to eighty-five dollars (\$85.00) per meeting under § 25-16-904.

SECTION 2. Arkansas Code § 25-16-904, concerning stipend authorization, is amended to add an additional subdivision to read as follows:

(24) The review panel under the Freedom of Information Act of 1967, § 25-19-101 et seq.

SECTION 3. DO NOT CODIFY. Temporary legislation.

(a) The members of the panel shall be appointed within thirty (30) days of the effective date of this act.

(b)(1) The panel shall hold its first meeting within ninety (90) days of the effective date of this act.

(2) At the first meeting of the panel, the members shall draw lots for terms so that one (1) member will serve for a term of four (4) years; one (1) member will serve for a term of five (5) years; and one (1) member will serve for a term of six (6) years.

/s/Tucker