

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1726

By: Representative Ray
By: Senator B. Davis

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE FREEDOM OF INFORMATION ACT OF 1967; TO AMEND THE LAW CONCERNING DEFINITIONS USED IN THE FREEDOM OF INFORMATION ACT OF 1967; TO ADD PUBLIC RECORDS EXEMPTIONS; TO AMEND PUBLIC MEETINGS REQUIREMENTS; TO AMEND REQUIREMENTS RELATED TO CUSTODIANS PROCESSING PUBLIC RECORDS REQUESTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE FREEDOM OF INFORMATION ACT OF 1967; TO ADD DEFINITIONS; TO ADD PUBLIC RECORDS EXEMPTIONS; TO AMEND PUBLIC MEETINGS REQUIREMENTS; AND TO AMEND REQUIREMENTS RELATED TO CUSTODIANS PROCESSING PUBLIC RECORDS REQUESTS.

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

SECTION 1. Arkansas Code § 25-19-103, concerning definitions used under the Freedom of Information Act of 1967, is amended to add additional subdivisions to read as follows:

(10) "Governmental agency" means an office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, including without limitation the office of a public official;

(11) "Public appointee" means an individual who is appointed to



a governmental agency.

(12) "Public employee" means an individual who is employed by a governmental agency or who is appointed to serve a governmental agency;

(13) "Public official" means a person holding an elective office of any governmental agency, whether elected or appointed to the office; and

(14) "Public servant" means a person who is serving at the state level of government and is a:

(A) Public appointee;

(B) Public employee; or

(C) Public official.

SECTION 2. Arkansas Code § 25-19-105(b)(6), concerning records not to be deemed to be made open to the public under the Freedom of Information Act of 1967, is amended to read as follows:

(6) Undisclosed or ongoing investigations by law enforcement agencies of suspected criminal activity and any evidence or materials likely to be used by law enforcement in a criminal prosecution;

SECTION 3. Arkansas Code § 25-19-105(b), concerning records not to be deemed to be made open to the public under the Freedom of Information Act of 1967, is amended to add additional subdivisions to read as follows:

(28) Communication between a public servant acting in the performance of his or her duties or within the scope of his or her employment and the legal counsel of a governmental agency, relating to legal advice or assistance provided to the public servant in the performance of his or her duties, including without limitation:

(A) Records or memoranda prepared by the legal counsel related to the legal advice or assistance provided; and

(B) Communication between the legal counsel of the governmental agency and the legal counsel of another governmental agency, if the communication is related to the advice or assistance provided;

(29) A record that was prepared:

(A) By an attorney representing a governmental agency or a public servant acting in the performance of his or her duties or within the scope of his or her employment; and

(B) In anticipation of litigation or for use in pending

litigation;

(30) Deliberative process records of a governmental agency in which opinions are expressed or policies or actions are formulated, if related to a needed determination of policy or action and created or received by the agency, including without limitation:

(A) Drafts;

(B) Notes;

(C) Recommendations;

(D) Memoranda;

(E) Correspondence; and

(F) Other records, if related to an agency determination of policy or action; and

(31)(A) Data, records, or information that is:

(i) Of a proprietary nature;

(ii) Produced or collected by or for faculty, staff, students, or contractors of an institution of higher education, a governmental agency, or a public or private entity supporting or participating in the conduct of research on agricultural, medical, commercial, scientific, technical, scholarly, institutional, or artistic matters, whether sponsored by the institution of higher education alone or in conjunction with a contractor, governmental agency, or public or private entity; and

(iii) Not publicly released, published, copyrighted, or patented.

(B) The exemption provided in subdivision (b)(30)(A) of this section includes without limitation:

(i) Information that discloses the identity of any participants or private entities in the research;

(ii) Information provided by participants in the research;

(iii) Research notes and data;

(iv) Discoveries;

(v) Methodologies;

(vi) Protocols; and

(vii) Creative works.

SECTION 4. Arkansas Code § 25-19-105(d)(3)(A), concerning the examination and copying of public records under the Freedom of Information Act of 1967, is amended to read as follows:

(3)(A)(i)(a) Except as provided in subdivision (d)(3)(A)(i)(b) of this section, § 25-19-109, or by law, any fee for copies shall not exceed the actual costs of reproduction, including the costs of the medium of reproduction, supplies, equipment, and maintenance, but not including existing agency personnel time associated with searching for, retrieving, reviewing, or copying the records.

(b) If personnel time to retrieve, review, redact, and provide records exceeds eight (8) hours, personnel time exceeding eight (8) hours may be charged at a rate not to exceed the salary or hourly pay of the lowest paid employee or contractor who, in the discretion of the custodian, has the necessary skill and training to respond to the request.

(ii)(a) The custodian may also charge the actual costs of mailing or transmitting the record by facsimile or other electronic means.

(b) If the custodian's existing software requires that records be printed out and scanned electronically to be electronically transmitted, the custodian may charge the requestor for the actual cost incurred to print and scan the records.

(iii) If the estimated fee exceeds twenty-five dollars (\$25.00), the custodian may require the requestor to pay that fee in advance.

(iv) Copies may be furnished without charge or at a reduced charge if the custodian determines that the records have been requested primarily for noncommercial purposes and that waiver or reduction of the fee is in the public interest.

(v)(a) Except as provided in § 25-19-109 or otherwise in this section, the custodian may not charge a fee for the requestor's inspection or copying, including without limitation copying through image capture, including still and moving photography and video and digital recording, of public records.

(b) If personnel time to retrieve, print, copy, or otherwise provide records for the requestor's inspection or copying exceeds eight (8) hours, personnel time exceeding eight (8) hours may be

charged at a rate not to exceed the salary or hourly pay of the lowest paid employee or contractor who, in the discretion of the custodian, has the necessary skill and training to respond to the request.

(vi) If a requestor has outstanding invoices for requests previously filled under this section, the custodian may refuse to fulfill any new requests from the delinquent requestor under this section until the outstanding invoices are paid in full.

SECTION 5. Arkansas Code § 25-19-105(e), concerning the examination and copying of public records under the Freedom of Information Act of 1967, is amended to read as follows:

(e)(1) If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within ~~three (3)~~ ten (10) working days at which time the record will be available for the exercise of the right given by this chapter.

(2) If it is not practicable to retrieve, review, redact, and provide requested public records within the normal business hours of the number of working days specified in subdivision (e)(1) of this section, the custodian shall notify the requestor of the necessary delay in writing and shall provide the following information:

(A) The date and time at which the records will be made available;

(B) The specific reason why the records cannot be produced within the applicable time period; and

(C) A breakdown of the estimated employee or contractor time that will be spent fulfilling the request.

SECTION 6. Arkansas Code § 25-19-106(c)(1)(A), concerning open public meetings under the Freedom of Information Act of 1967, is amended to read as follows:

(c)(1)(A) Except as provided under subdivision (c)(6) of this section, an executive session will be permitted only for the purpose of: ~~considering~~

(i) Considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee; or

(ii) Discussing matters related to cybersecurity or

cyberattacks that could expose a governing body to vulnerabilities if made public.