

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter A. General, Procedural, or Legal

Part 2. Disclosure of Records Under Freedom of Information Act

Subpart 1. Generally

26 CAR § 2-101. Purpose.

(a) The Department of Finance and Administration, through its various sections, maintains different categories of records, some of which are subject to disclosure under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(b) The purpose of this part is to:

(1) Identify those records which are subject to disclosure under the Freedom of Information Act of 1967; and

(2) Establish procedures for providing those records.

Authority. Arkansas Code §§ 25-8-102, 26-18-301.

26 CAR § 2-102. Definitions.

The following definitions shall apply for the purposes of this part:

(1) "Confidential records" means public records which are not subject to disclosure under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., including:

(A) Income tax records;

(B) Tax records of individual persons which are specifically protected by the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.; and

(C) Driver's license records which are specifically protected under the driver's license laws;

(2)(A) "Disclosable records" means all public records and information maintained by the Department of Finance and Administration which are subject to

disclosure pursuant to the Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(B) This includes all records regularly maintained by the Department of Finance and Administration except:

- (i) Income tax records;
- (ii) Other tax records of individual persons; and
- (iii) Driver's license information;

(3) "Individual person" means a natural person and does not include:

- (A) Partnerships;
- (B) Trusts;
- (C) Corporations;
- (D) Organizations; or
- (E) Associations; and

(4)(A) "Public records" means writings, recorded sounds, films, tapes, or data compilations in any form required by law to be kept, or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by the Department of Finance and Administration.

(B) All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.

Authority. Arkansas Code §§ 25-8-102, 26-18-301.

26 CAR § 2-103. Records requests and inspection of records.

(a)(1) Requests for information should be made to the appropriate administrator of the Department of Finance and Administration, or their designee, who is responsible for maintaining the requested information.

(2) A list of administrators, their designees, and the offices they are responsible for is available from the office of the Commissioner of Revenues.

(3) Requests for disclosable records must:

- (A) Be in writing; and

(B) Specifically state the information desired in a manner sufficient to identify the requested records or information.

(b)(1) The administrator, or his or her designee, will provide reasonable:

(A) Access to the disclosable records or information; and

(B) Comforts and facilities to the requesting party for use in inspecting and copying the disclosable records and information.

(2) The requesting party must provide his or her own supplies and devices for use in inspecting and copying the disclosable records.

(c) If the requested records are disclosable but are in active use or in storage, the administrator will:

(1) Certify this fact, in writing, to the party requesting the records; and

(2) Set a date and hour, within three (3) days, when the records will be available to the requesting party.

(d) If the request is for regularly maintained, disclosable records, the administrator shall permit the inspection and copying of the records by the party making the request at a time and in a manner that does not interfere with normal office procedure.

(e)(1) If it is more convenient, economical, or expedient on behalf of the operation of the office of the custodian of the records, the custodian may elect to provide photocopies or compilations of disclosable records that are not regularly maintained in lieu of permitting inspecting of records at the office.

(2) If the party making the request agrees to photocopies or compilations of records in lieu of an individual inspection of records, the party making the request will be required to pay any extraordinary expenses incurred in compiling those records.

Authority. Arkansas Code §§ 25-8-102, 26-18-301.

26 CAR § 2-104. Disclosure of confidential tax records.

(a) Confidential tax records may be released only under circumstances specified in the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq., as follows:

(1) Publication of statistics by the Commissioner of Revenues classified to prevent the identification of a particular taxpayer;

(2) Use of the information in records filed under any state tax law by the commissioner when conducting any audit or investigation of any taxpayer in regard to any state tax;

(3)(A) Disclosure of information to the Attorney General of this state, any prosecuting attorney, or any other individual who is empowered by law to prosecute criminal and civil violations of any state tax law, when the commissioner initiates the investigation.

(B) If the prosecution is initiated by the Attorney General or a prosecuting attorney, the commissioner shall not disclose any information unless required by subpoena issued by a circuit court.

(C) Information may be introduced as evidence by the Attorney General, a prosecuting attorney, or other individual so empowered when they are prosecuting any civil or criminal violation of state tax law;

(4) Disclosure compelled by any Arkansas circuit or chancery court or the Arkansas Supreme Court or any United States federal court of information involved in any case or controversy before that court;

(5) Disclosure by the taxpayer or his or her duly authorized agent or by the commissioner, at the taxpayer's request, of any information which the commissioner has concerning that taxpayer;

(6) Disclosure by the commissioner, at his or her discretion, of information from the records of any state tax law to comparable officials of any other state or the United States who are charged with the administration of a similar tax;

(7) Disclosure of motor vehicle titling and registration information, and all licenses and permits issued to owners and operators of coin-operated amusement machines pursuant to:

(A) Acts 1977, No. 553, as amended; and

(B) Acts 1931, No. 167, as amended;

(8) Disclosure of information, other than income tax information, at an administrative hearing held regarding the issuance, cancellation, revocation, or suspension of licenses or permits issued by the commissioner or any other state agency or department; and

(9)(A) Disclosure to the Student Loan Authority Division of the Arkansas Economic Development Finance Authority and/or the Student Loan Guarantee Foundation of Arkansas of the last known address or whereabouts and/or the last known employer of any person from whom said agencies are charged with collecting a student loan indebtedness.

(B) In providing such information the commissioner shall not allow the Student Loan Authority Division or the Student Loan Guarantee Foundation of Arkansas to examine the tax return.

(b)(1) Any request for confidential records and information under the exceptions provided for in the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq., should be forwarded to the appropriate administrator, or his or her designee, for the Department of Finance and Administration.

(2) The administrator, or his or her designee, after consulting the Office of Revenue Legal Counsel, shall grant or deny the request in accordance with the provisions of the Arkansas Tax Procedure Act.

(3) Otherwise, requests for confidential information should be denied.

Authority. Arkansas Code §§ 25-8-102, 26-18-301, 26-18-303.

26 CAR § 2-105. Disclosure of drivers' records.

The Office of Driver Services may furnish an abstract of a driver's record to the following:

- (1) The driver on whom the record has been compiled;
- (2) Any person who has been authorized in writing by such driver to obtain the driver's record;
- (3) Any court having jurisdiction over traffic offenses;

(4) Any law enforcement officer who shall use such report only in the line of duty in enforcing the traffic laws of this state;

(5) Employers of drivers, provided the driver has given his or her written consent for such employer to obtain the driver record; and

(6)(A) Any governmental department or agency upon a showing of reasonable cause as to why the driver record should be issued to such governmental department or agency in order for the governmental department or agency to effectively carry out its statutory duties.

(B) Provided, however, that no driver record shall be reported to any individual, except duly authorized officials of the Office of Driver Services, unless a copy of such report and the name of the individual or organization which received the report is sent to the driver named in the report.

Authority. Arkansas Code §§ 25-8-102, 26-18-301, 27-50-911.