

GEORGIA PUBLIC SCHOOLS AND THE OPEN RECORDS ACT

A Citizen's Guide to Accessing School Records

Public school records lie at the critical intersection of an individual's right to privacy and the public's right to know. The public's access to records comprises one of the principle safeguards ensuring the accountability of educational institutions to the public. This core right of access in the educational arena, though, must be balanced at times with certain privacy rights of individual students that are codified in both state and federal law. When records of students are sought, the portions of those records that contain information related to a specific student's grades, academic performance, medical or financial information and social security numbers must be redacted from the documents prior to disclosure absent the consent of either the student or his or her guardian.

Federal law regarding confidentiality of student records is found primarily in the Family Educational Rights and Privacy Act, more commonly known as either as "FERPA" or the "Buckley Amendment." Some school systems and advocates have argued to keep all school records confidential, primarily basing their arguments on FERPA. Others are concerned that the privacy protection of FERPA has been interpreted much too broadly, extending well beyond the bounds that Congress intended at the time of passage. It must be recognized that there are valid and legitimate concerns for keeping some student-specific education records private. However, there are equally valid policy reasons and legal requirements that mandate that certain school records, especially those containing school or system-wide aggregate statistics and data, must be open and available for public inspection.

This booklet has been prepared for the use of school personnel, both at the K-12 and post-secondary level, who have the responsibility of complying with the Open Records Act. The underlying purpose of this booklet is to assist personnel in understanding the law's requirements that public school records must be made available for public inspection absent a clear legal requirement preventing disclosure or requiring the redaction of certain confidential information. The publication of this booklet has come about as a result of the cooperation and collaboration of several organizations and agencies, all of which should be proud of their contribution to producing this guide to Georgia public schools and the Open Records Act.

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I. OVERVIEW OF GEORGIA'S OPEN RECORDS ACT

A. Purpose of the Georgia Open Records Act

The purpose of the Open Records Act is both to encourage public access to information and to foster confidence in government through openness to the public. The intent of the General Assembly was to afford to the public at large a right of access to government records while permitting a few narrow categories of information to be withheld where nondisclosure was believed to be in the public interest.

B. Act applies to all public records

Under the Open Records Act, *all* records prepared and maintained or received in the course of the operation of the agency are presumed to be open for public inspection and copying. This applies to all records compiled for public schools, including:¹

- Documents
- Maps
- Photographs
- Papers
- Books
- Tapes
- Letters
- Computer records

The Act applies to *existing records*. It does not require that a school or other agency answer questions, create new documents or write new reports (except to the extent that it is simply providing data or reports kept on or created through a computer database).

C. Exemptions to presumption of access interpreted narrowly

Georgia law makes clear that exemptions to the Open Records Act must be interpreted narrowly. The Act also provides that once exempt information is removed or “redacted” from a record, the rest of the record must be made available for inspection and copying. Thus, if a document contains some information that is exempt from disclosure under the Act and some that is not, the exempt information is removed or blacked out on a copy of the document, and then the copy of the document is made available for inspection or further copying.

D. Act protects disclosure of information in good faith, punishes willful nondisclosure

An agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act is not liable under

state law for providing access to the records. However, knowingly or willfully violating the Open Records Act by failing or refusing to provide access to records not subject to an exception or by failing or refusing to provide access to records within the time limits set forth in the Act is a misdemeanor.

E. Act requires an agency to respond and permit access as soon as reasonably possible

When a record is readily available and subject to public access, access should be provided immediately. Even when a record is not readily available, an agency must provide access to the record within three business days unless the record cannot be made available within that time. In this circumstance (where the record cannot be made available within three business days) the agency must write the respondent within three days providing a description of the documents and stating a timetable for their production.

Similarly, if an agency is relying on an Open Records Act exception in not producing a record or information in a record, it must so state in writing within three business days. The letter must also state the specific legal authority exempting the record from disclosure, including the code section, subsection, and paragraph. Alternatively, within that period of three business days, an agency may obtain an order from a superior court staying or refusing the requested access to the record.

If the agency is going to charge for any of its costs (see Section VIII) for producing the record, it must provide an estimate of its costs in writing within three business days as well. The respondent must agree to these costs before they can be charged, so agencies often request a written confirmation from the requester that they agree to pay the costs. Agencies generally may not insist on prepayment, however, as a condition to complying with the Open Records Act.

F. Contracts and agreements circumventing the Act are void because contrary to public policy

An agency may not rely on a contract promising confidentiality of public records that are otherwise disclosable under the Open Records Act.² Such a contract is void as its terms are contrary to the statutory requirements of the Act, and therefore are in violation of public policy.³

II. FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT

A 1974 federal law, the Family Educational Rights and Privacy Act (FERPA), also known as the “Buckley Amendment”, addresses pre-secondary, secondary, and post-secondary schools that have a “policy or practice” of releasing personally identifiable information in education records. The intent of FERPA is to protect records “relating to individual student academic performance, financial aid, or scholastic probation.”⁴ This includes controlling the careless release of educational information on the part of many educational institutions and providing some privacy for students and parents in relation to different types of school records.⁵

However, FERPA does not explicitly prohibit or restrict the release of a student’s educational records. Instead, the Act provides for the federal Department of Education to limit the dispersal of federal educational funds to any school which has a “policy or practice of permitting the release of education records (or personally identifiable information contained therein ...) of students without the written consent” of either the student or his or her parents.⁶ FERPA does not provide a private cause of action for individuals to enforce the federal funding provisions. That authority is reserved to the federal government.⁷ If an individual believes a school has improperly disclosed personally identifiable information, he or she should contact the Family Policy Compliance Office, created under FERPA, to address this issue. The Family Policy Compliance Office is located at the U.S. Department of Education, 400 Maryland Ave. SW, Washington, D.C. 20202-5920 (www.ed.gov or 202-260-3887).

III. INTER-RELATIONSHIP BETWEEN FERPA AND GEORGIA’S OPEN RECORDS ACT

While FERPA is a precondition for receipt of federal funding, the Supreme Court of Georgia has indicated that it is no defense to a school’s compliance with Georgia’s Open Records Act.⁸ According to the Court, FERPA does not prohibit disclosure of documents; rather it operates to deprive an educational institution of funds if personally identifiable information in educational records is disclosed without consent. In short, at least according to this case, FERPA does not affirmatively “require” schools to do anything, but instead allows for the withholding of federal funds from agencies that do not abide by its terms. The Georgia Supreme Court decision suggests that FERPA does not insulate schools from compliance with Georgia’s open records laws. The Georgia Supreme Court also notes that even under FERPA, if a court so orders, the records must

be disclosed.⁹

Not all courts have agreed with the Georgia Supreme Court's interpretation of FERPA. Relying in part on the Supreme Court of Georgia's decision, as well as on its own interpretation of the Ohio Open Records Act, the Supreme Court of Ohio also held that student disciplinary records were subject to public disclosure.¹⁰ Thereafter, Miami University notified the U.S. Department of Education that, in compliance with this ruling, the University felt that it could no longer comply with the confidentiality requirements that the Department felt were encompassed within FERPA.¹¹ The U.S. Department of Education then sued the University to enjoin it from the release of individual student disciplinary records and prevailed both in the trial court and on appeal.¹² In reaching its decision, the Sixth Circuit Court of Appeals found that the Ohio Open Records Act provided an exception for the release of education records as provided by federal law, FERPA in particular.¹³ The Court concluded that the Ohio Supreme Court had erred in its interpretation of FERPA in applying this exception and that FERPA did indeed provide a federal exception for the release of covered records.¹⁴

Because of the differing judicial interpretations of FERPA, there may be many circumstances when it will be in the best interests of a party making an Open Records Act request to agree that an education institution may comply with FERPA so as to avoid further controversy.

IV. STUDENT RECORDS

FERPA limits access to "personally identifiable information" contained in the "educational records" of students. "Educational records" are defined as "records that are directly related to a student," and "maintained by an educational institution."¹⁵ "Personally identifiable information" includes:

- A student's name;
- The name of the student's parent or other family member;
- The address of the student or student's family;
- A personal identifier such as the student's Social Security number or student number;
- A list of personal characteristics that would make the student's identity easily traceable; or
- Other information that would make the student's identity easily traceable.¹⁶

A. Non-educational records

FERPA allows access to student records to the extent they do not meet the definition of educational records. For example, FERPA allows educational institutions to aggregate data and disclose statistical information from education records, without consent of either students or parents, so long as the student's identity is not "easily traceable."¹⁷ The following categories are not considered educational records, and thus are subject to disclosure under Georgia's Open Records Act.

1. **Directory information:** Information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (*e.g.*, undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic team, degrees, honors and awards received, and the most recent educational agency or institution attended.¹⁸ However, individual students may withhold disclosure of information if they so choose.¹⁹
2. **Records created after a student leaves the institution:** Student records created after the student leaves the educational institution are subject to disclosure.²⁰
3. **Employment records:** Subject to disclosure unless the employee is a student at the university, and the employment is a result of the student's status as a student at the university.²¹
4. **Test scores of K-12 students:** In addition to the Open Records Act, a provision in Georgia law requires release of certain test scores in statistical format, but this statute requires that such information "shall not contain the names of individual students or teachers."²²
5. **Law enforcement records:** Records of campus police must be maintained for law enforcement purposes and kept separate from student's education records.²³ Records created by a law enforcement unit of the educational agency for the purpose of law enforcement²⁴ are specifically exempted from FERPA's definition of educational records, unlike individual student disciplinary reports of the institution.²⁵

In addition, under the Georgia Open Records Act, initial incident reports and initial police arrest reports of a public educational institution are subject to the Act's disclosure requirements, regardless of whether they are part of an active investigation. Any report, whether entitled a "supplemental report," "narrative report," or similar document name that is produced as part of an initial incident report or can be characterized as such, is likewise to be disclosed.²⁶

The fact that campus police are employed by a private educational institution does not alter their obligation to produce investigative records where required by the Georgia Open Records Act.²⁷

- a. **Daily campus crime logs:** All public and private post-secondary institutions that receive federal funding and maintain a police department must keep a daily log, in a form that can be easily understood, recording all crimes reported to the police department.²⁸ Crimes must be added to the log within two days of their initial report.²⁹ Log entries must include the nature of the crime, its date, time, and general location, and the disposition if known.³⁰

- b. **FERPA's requirement to release security reports:** Colleges and universities are required to publish an annual security report containing campus security policies and procedures, the law enforcement authority status of security personnel, a description of drug and alcohol abuse, crime prevention and sexual assault education programs available to the campus community, a listing of any policies that encourage accurate and prompt reporting of crime to the appropriate police agencies, campus policies regarding law enforcement relating to drug and alcohol use, and actual crime statistics.³¹ Crime statistics must be maintained for: (1) criminal homicide; (2) sex offenses; (3) robbery; (4) aggravated assault; (5) burglary; (6) motor vehicle theft, and (7) arson. Where an arrest or disciplinary referral is made, a school must also report statistics concerning: (8) liquor law violations; (9) drug law violations; and (10) illegal weapons possession.³²

Statistics must also be maintained for categories (1) through (7) above when the victim was intentionally selected because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.³³

- c. **“Timely” reports regarding crimes that present an ongoing threat to the campus community:** All campus security personnel and other officials of an educational institution who have responsibility for student activities are responsible for issuing timely warnings concerning the crimes listed in the school’s annual statistical report.³⁴

B. Educational records releasable with consent

The following educational records can only be released with consent.

1. Medical and psychological records

- a. **Elementary and Secondary:** Student medical and psychological records prepared by a physician or psychological in connection with treatment of a student are releasable under FERPA only with a parent or eligible student’s consent.³⁵
- b. **Post-Secondary or age 18 or older:** Student medical and psychological records prepared by a physician or psychological in connection with treatment of a student may be released by the student to a physician or psychologist of his choice.³⁶

2. Academic records

A student’s academic records are subject to disclosure under FERPA only with a parent or eligible student’s consent or pursuant to one of the exceptions to consent set forth in the federal act.³⁷

3. Admissions records

To the extent a prospective student does not earn admission to a particular school, his or her admission records are subject to disclosure under FERPA. However, to the extent a prospective student gains admission to and attends a particular school, his or her admission records are subject to disclosure under FERPA only with a parent or eligible student’s consent.³⁸

4. Letters of recommendation

Letters of recommendation placed in a student’s file prior to January 1, 1975 are subject to disclosure under FERPA only with a parent or eligible student’s consent.³⁹

V. CAMPUS COURTS

The Georgia Supreme Court has ruled that the proceedings and records of campus courts as they relate to discipline of student organizations are open to the public.⁴⁰ Campus court records as they relate to the individual discipline of a student are more problematic. The Georgia Supreme Court has not directly ruled on the question but, as noted above, has indicated doubt that FERPA requires that student records be kept confidential where disclosure is required by the Open Records Act.⁴¹ However in a contest between a state open record law and the Buckley Amendment as to student disciplinary proceedings, a federal district court has ruled that the Buckley Amendment rules and trumps a state open record law.⁴²

VI. SCHOOL PERSONNEL RECORDS

In general, information pertaining to public school teachers and employees is available to the public under Georgia's Open Records Act.⁴³ However, public school teachers and employees do have one specific exemption under the Act. The following information pertaining to public school teachers and employees may be redacted prior to release:

- Social Security number
- Mother's birth name
- Month and day of birth
- Insurance or medical information
- Home address and telephone number⁴⁴
- Financial data or information
- Bank account information
- Credit card information
- Debit card information

A. Applications for employment

Applications for employment are subject to the Act's disclosure requirements after redaction of the information cited above.⁴⁵

B. Background investigations

Background investigations are subject to the Act's disclosure requirements with the exception of confidential evaluations, or examinations undertaken in connection with the employee's appointment or hiring.⁴⁶

C. Benefits selections/payroll deductions

Individual employee benefits selections and payroll deductions are exempt from release.⁴⁷

D. Birth certificates

Birth certificates are exempt from release.⁴⁸

E. Certificates of training

Certificates of training and course completion are subject to the Act's disclosure requirements after redaction of the information cited above.⁴⁹

F. Commendations

Commendations are subject to the Act's disclosure requirements.

G. Criminal history background checks

Criminal history background checks which have been incorporated into a personnel file are subject to the Act's disclosure requirements.⁵⁰

H. DD-214s (military discharge forms)

Military discharge forms (DD-214s) are exempt from release and must not be disclosed pursuant to the Open Records Act until after a period of 50 years has elapsed from the date of its filing.⁵¹

I. Driver's license information

Driver's license information and Georgia driving history reports (MVR) that have been incorporated into a personnel file are subject to the Act's disclosure requirements.⁵²

J. Financial records

Personal financial data (bank account numbers, etc.) is exempt from release. The salary and other compensation paid to an employee, however, is subject to the Act's disclosure requirements.⁵³

K. Health insurance records

Health insurance records as well as other personal insurance information are exempt from release.⁵⁴

L. Medical records

Medical records are exempt from release.⁵⁵

M. Performance evaluations

Under the provisions of a separate Georgia law, annual teacher evaluations in public schools are not subject to the Act's disclosure requirements.⁵⁶ After redaction of the information cited above, however, other performance evaluations are subject to release.⁵⁷ The annual evaluations of school superintendents are not subject to release.⁵⁸

N. Reprimands/adverse personnel actions

Reprimands and adverse personnel actions are subject to the Act's disclosure requirements after redaction of the information cited above.⁵⁹

O. Training records

Training records are subject to the Act's disclosure requirements after redaction of the information cited above.⁶⁰

VII. ADMINISTRATION RECORDS

The Georgia Open Records Act governs disclosure of records generated by and pertaining to school administration. Several specific sections in the Act specifically address public school administration.

A. School board records

The records of local school boards are subject to the Open Records Act.⁶¹ By statute, all official proceedings of the local board of education are designated as public records subject to public inspection.⁶²

B. Board of Regents

The Board of Regents of the University System of Georgia is subject to the Open Records Act, since it is an agency of the state. As a result, all of its records are subject to the Open Records Act.⁶³

C. University president/school superintendent search

At least fourteen (14) calendar days prior the meeting at which final action or a vote is to be taken for a university president, school superintendent, or other similar executive, the public agency making such decision shall release all documents which came into its possession in connection with the three or more finalists for the position. Prior to the release of these documents, the public agency making the decision may allow a finalist to decline being considered further for the position rather than have documents pertaining to her or him released. In that event, the public agency shall release the documents of the next most qualified person under consideration who does not decline the position.⁶⁴

D. University-related foundations

The records of university-related foundations are subject to Georgia's Open Records and Meetings Acts, and therefore subject to disclosure.⁶⁵ However, donor lists are not subject to disclosure.⁶⁶

VIII. THE OPEN RECORDS ACT PROCESS

A. Release of records

A public agency or other covered entity's "records custodian" is generally responsible for compliance with the Open Records Act. This individual may be a designated staff person or the agency head.

An Open Records Act request can be oral; a written request for open records is not required by law.⁶⁷ However, it is advisable to log or attempt to obtain such requests in writing, to eliminate any dispute as to what was requested or when the request was made. An agency may ask that the request be put in writing if it is complex or difficult to understand. A sample open records request is included in the Appendix.

When records are readily available and subject to public access, they must be provided immediately. When this is not the case, the custodian of records is allowed a "reasonable amount of time" to determine whether the requested records are subject to access under the law. Unless the records cannot be made available, they must be produced for inspection within three business days. The records custodian can respond in one of three ways:

1. If the records exist, are subject to public disclosure and are available, the records custodian must permit inspection and copying within three business days.
2. If the records exist and are subject to public disclosure but are not available within three business days of the request, a written description of such records and a timetable for their inspection and copying must be provided within the three day period. Likewise, if costs will arise that are permitted by the Act to be charged to the requester, the agency must estimate the costs in writing to the requester within three days of its receipt of the request. Among other things, costs may be incurred if the requester asks for copies rather than simple inspection of the records. It is normal (and advisable) for the agency to not incur the response costs until it has a commitment to pay from the requester, and some requesters will state this commitment in their initial letter.
3. If access to a record is denied in whole or in part, within three business days the records custodian must provide, in writing, the specific legal authority exempting such record from release.

Any person who knowingly or willfully violates the provisions of the Act by failing or refusing to provide access to records not subject to an exception under the Act, or by failing or refusing to provide access to records within the time limits set forth in the Act, shall be guilty of a misdemeanor.

B. Non-existent records

If a report, summary, or compilation is not in existence at the time of the request, the records custodian is not required to prepare one in order to respond to the request.⁶⁸

However, if the record already exists and is subject to disclosure, the custodian must permit inspection and copying.⁶⁹

C. Electronic records

Records maintained by computer shall be made available where practicable by electronic means, including internet access, subject to reasonable security restrictions preventing access to records not requested or records exempt from release.⁷⁰

D. Appropriate fees

1. Fee notification requirement

An agency is not required to charge for complying with an Open Records Act request and may waive any charges.

However, if a fee is to be charged, the agency must notify the requester of the estimated costs associated with processing the records within the three day period and prior to fulfilling the request.⁷¹

2. Optional charges

Except for the first fifteen (15) minutes taken to comply with a request, an agency may charge a reasonable fee for the administrative costs associated with the search, retrieval, review, copying, reproduction and mailing of public records. However, an agency must provide copies of requested documents “in the most economical means available.”

Agencies may recover copying costs, but must be able to substantiate the per page charge imposed. Unless otherwise specified by state law, an agency may not charge more than 25¢ per page for each copy.

Hourly charges for administrative/clerical tasks may not exceed the salary of the lowest paid, full-time employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request. No charge may be made for the first quarter hour of administrative time.

Where the information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred. However, no fees other than those directly attributable to providing access may be charged where the records are made available by electronic means.

The Georgia Supreme Court has held that no fee may be charged when a person seeks only to review records that are routinely subject to public inspection, such as deeds, city ordinances and zoning maps.⁷² An agency also may not charge for time its attorneys spend advising whether records should be disclosed.⁷³

APPENDIX 1

Educational Records Releasable without Consent under FERPA

The following information is not specifically relevant to the Open Records Act of Georgia, but is provided as a guide to schools regarding what information FERPA will allow to be released with a subpoena or to certain agencies without student or parental consent.

1. Health or safety emergency records

An educational institution may release records without eligible student or parent consent if the records are in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

The institution must consider the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and the extent to which time of the essence in dealing with the emergency.⁷⁴

2. Disciplinary records for conduct posing a significant risk to student safety

An educational institution may release records without eligible student or parent consent pertaining to records concerning disciplinary action taken against such student for conduct that poses a significant risk to the safety of that student, other students, and the school community, are subject to release under FERPA.⁷⁵ However, state law, O.C.G.A. § 20-2-757, makes many of those records confidential so they could not be released in response to an open records request.⁷⁶

3. Disciplinary proceeding results for violent crimes or non-forcible sex offenses

- a. Elementary and Secondary: Not applicable
- b. Post-secondary: An educational institution may release certain records without eligible student or parent consent if the disclosure is to a victim of an alleged perpetrator of a crime of vio-

lence or a non-forcible sex offense. The institution may disclose the final results of the disciplinary proceeding to the victim, regardless of whether it concluded that a violation of its rules or policy was committed.⁷⁷

The institution may also disclose to the public at large a limited version of the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense only if the institution concludes that the offender violated its policy or rule with respect to the alleged offense.⁷⁸

4. Subpoenaed records

An educational institution may release records without eligible student or parent consent if the records are subpoenaed or court ordered to be released. However, the educational institution must make a reasonable effort to inform the eligible student or parent in advance of compliance with the subpoena or court order.⁷⁹

5. Records requested by individual or entity with “legitimate educational interests”

An educational institution may release records without eligible student or parent consent to other school officials, including teachers, within the educational institution whom it has determined to have “legitimate educational interests.”⁸⁰

6. Records requested by transfer school

An educational institution may release records without eligible student or parent consent to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

7. Records in connection with financial aid

An educational institution may release records without eligible student or parent consent in connection with financial aid for which the student has applied or received, if the information is necessary to determine eligibility for the aid, the amount of the aid, the conditions for the aid, or enforce the terms and conditions of the aid.

8. Records released to federal, state, and local authorities

An educational institution may release records without eligible student or parent consent to authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of United States Department of Education, or state and local authorities.⁸¹

9. Records requested by organizations conducting studies

An educational institution may release records without eligible student or parent consent to organizations conducting studies or educational institutions to develop or administer predictive tests, student aid programs, or improve instruction. In order to receive this information, the studies must be conducted in a manner that does not permit the personal identification of parents and students by individuals other than representatives of the organization.⁸²

10. Records requested by accrediting agencies

An educational institution may release records without eligible student or parent consent to accrediting organizations to carry out their accrediting functions.⁸³

11. Records requested by parents in connection with student violations or law, institutional policy, or use or possession of alcohol or controlled substances

An educational institution may release records without eligible student consent to a parent regarding that student's violation of any federal, state, local, or institutional rule governing the use or possession of alcohol or a controlled substance if the institution determines that the student has committed a disciplinary violation with respect to that use or possession and the student is under age 21 at the time of disclosure to the parent.⁸⁴

APPENDIX 2a

Sample Open Act Records Request

NOTE: If you want to have evidence of the date of delivery, then delivery can be by hand delivery or by certified mail, return receipt requested.

[Requestor's letterhead]

[Date]

[Custodian's name]

[Agency's name]

[Street address]

[City, State, Zip]

To whom it may concern:

Pursuant to the Georgia Open Records Law (O.C.G.A § 50-18-70 et seq.) (the "Law"), you are hereby requested to make available for review and copying all files, records and other documents in your possessions that refer, reflect or relate to _____. This request includes, but is not limited to, all documents, notes, correspondence and memoranda evidencing _____, and all communication and correspondence in whatever tangible medium between _____ and among _____ and _____.

If this request is denied in whole or in part, we ask that you cite in writing the specific statutory exemption upon which you have relied, as required by law. We also ask that you release all separate portions of otherwise exempt material. Please waive any costs associated with this request, or first inform me of such costs as required by Georgia law.

As you know, the Law requires a response by you within three business days of your receipt of this letter and provides sanctions for non-compliance.

Should you have any questions, please do not hesitate to contact me at [Your telephone number] or [Your E-mail address].

Sincerely,

[Your name]

[Your title]

[Your fax number]

Date of response must be within three business days of when request was received by the department.

[Agency's letterhead]

January 1, 2007

John Q. Public
123 Main St.
Any town, Ga. 30001

RE: Game contracts with schools and officials

Dear Mr. Public:

The following is in response to your Open Records request, received by the Uptown School District on January 2, 2007, regarding the above referenced item.

The response should include the date the request was received.

A search for the requested information was made and 22 athletic contracts have been identified and are available for review. In addition, the agency expects to exempt the following information from dissemination if found in the documents:

List all information exempt from dissemination and cite the specific Georgia Law that exempts the information. The list of exemptions must appear in the initial letter sent to the requestor.

Home address, home telephone number, Social Security number, and insurance or medical information of public employees, teachers and employees of a public school
See O.C.G.A. § 50-18-72(a)(13.1)

Please contact [Specify name] at [Phone number] to make arrangements to review the records.

If you wish to retain copies of the documents, you will be charged 25 cents per page. There are 177 pages total, and therefore the estimated total cost responsive to your request should not exceed \$44.25 (plus postage, if applicable).

Sincerely,

[Respondent's name]
[Title]

APPENDIX 3

Information Exempt from Public Disclosure

Public disclosure is not required for certain records and information. The following is a list of records and information exempt from release and the corresponding legal authority. Any agency or person who provides access to information in good faith reliance on the requirements of the Open Records Act shall not be liable in any action on account of having provided access.

**** Before relying on an exemption, you must assure yourself that it applies ****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
AIDS/HIV information	50-18-72(a)(2), 31-22-9.1(a)(2), 24-9-47(b)	Mandatory
Birth certificates	31-10-25(a)	Mandatory
Burglar/fire alarm information	50-18-72 (a)(11.2)	Discretionary
Carpooling information	50-18-72(a)(14)	Discretionary
Confidential informants	50-18-72(a)(3)	Discretionary
Credit report	15 U.S.C. 1681b(a)(4)(D)	Mandatory
Confidential evaluations or examinations in connection with new appointments or hires	50-18-72(a)(5)	Discretionary
Confidential records concerning reports of child abuse	49-5-40(b), but disclosure may be required by juvenile court order under 49-5-41(b) or by law if child is deceased pursuant to 49-5-41(c)	Mandatory

APPENDIX 3

Information Exempt from Public Disclosure

**** Before relying on an exemption, you must assure yourself that it applies ****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Confidential grand jury testimony	Federal Rule Criminal Procedure 6(e), <i>Kessler v. State</i> , 249 Ga. 462, 474 (1982)	Mandatory
Criminal history records other than in-Georgia felony convictions	35-3-34(a) (1)(A), 35-3-34 (d.1), 35-3-38, 28 U.S.C. § 534 (NCIC record) (but see Chapter III(G) of this manual regarding disclosure when in closed case file and Chapter IV(G) when in a personnel file)	Mandatory
Deferred compensation salary deductions	45-18-36(b)	Mandatory
Department of Human Resources clinical records	37-3-166(a)	Mandatory
Driver's license information to the extent it is obtained from Department of Motor Vehicle Safety	40-5-2(b)	Mandatory
Federal records required by the federal government to be kept confidential	50-18-72(a)(1), but see <i>Georgia Hospital Association v. Ledbetter</i> , 260 Ga. 477 (1990) (no requirement "that a report generated by or used by the state for state purposes be exempted from disclosure merely because the report would be kept confidential if generated or used by the federal government.")	Mandatory

APPENDIX 3

Information Exempt from Public Disclosure

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EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Flexible employee benefit plan	45-18-53(b)	Mandatory
Home address, home telephone number, social security number, and insurance or medical information of public employees, teachers and employees of a public school	50-18-72(a)(13.1)	Discretionary
Home address, home telephone number, social security number, and insurance or medical information of law enforcement, judges, crime lab scientists and correctional officers	50-18-72(a)(13)	Discretionary
Information received from an insurance company investigating a fire loss of real or personal property	25-2-33(d)	Mandatory, but review statute
Information, the disclosure of which would constitute an actionable invasion of privacy	50-18-72(a)(2); Harris v. Cox Enterprises, 256 Ga. 299 (1986) ; Athens Observer v. Anderson, 245 Ga. 63 (1980) (“where an incident is a matter of public interest, or the subject matter of a public investigation, a publication in connection therewith can be a violation of no one’s legal right of privacy”)	Mandatory
Confidential juvenile records	15-11-82(b), but see Chapter V of this manual for list of crimes for which disclosure is required	Mandatory
Medical records	50-18-72(a)(2), (11.3)	Mandatory

APPENDIX 3

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**** Before relying on an exemption, you must assure yourself that it applies ****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Military discharge (DD-214)	15-6-72(c)(1)	Mandatory
Name/ID of rape victim	Doe v. Board of Regents of the University System of Georgia, 215 Ga. App. 684 (1994)	Mandatory, but see Dye v. Wallace, 274 Ga. 257, n.1 (2001).
The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence, of abuse or exploitation of residents in long-term care facilities	31-8-86	Mandatory
Open investigation/pending prosecution	50-18-72(a)(4)	Discretionary
Social Security number, mother's maiden name, day and month of birth, and credit, bank account, insurance and medical information	50-18-72(a)(11.3)(A)	Mandatory, but see media exception Chapter IV of this manual.
Confidential surveillance/ investigation by law enforcement	50-18-72(a)(3)	Discretionary
Confidential tax information	48-7-60(a), 48-7-61(a)(b)(c), Bowers v. Shelton, 265 Ga. 247 (1995)	Mandatory, but see 40-7-31.1
Vehicle tag number and registration to the extent it is obtained from the Department of Motor Vehicle Safety	40-2-130(c)	Mandatory

APPENDIX 3

Information Exempt from Public Disclosure

**** Before relying on an exemption, you must assure yourself that it applies ****

EXEMPTION	AUTHORITY	DISCRETIONARY OR MANDATORY
Whistleblower's identity (public employee issuing a complaint or providing information concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations)	45-1-4 (c)	Mandatory
Wiretap (technical data)	16-11-64(b)(8), 50-18-72(a)(3)	Mandatory
Wiretap (records/documents of)	16-11-64(b)(8)	Mandatory

NOTES

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A Citizen's Guide to Accessing School Records

- ¹ Under federal regulations promulgated pursuant to the Family Educational Rights and Privacy Act (FERPA), records include “any information recorded in any way, including but not limited to handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche.” 34 C.F.R. § 99.3.
- ² See 2005 Op. Atty. Gen. U2005-1; 1989 Op. Atty. Gen. 89-32; *City of Helen v. White County News*, Superior Court of White County, Case No. 96-CV-409DB (1996).
- ³ See *Feltus v. DeKalb County*, Superior Court of DeKalb County, Case No. 04-CV-5630-1 (2005); 1989 Op. Atty. Gen. 89-32.
- ⁴ *Red & Black Publishing Co. v. Bd. of Regents*, 262 Ga. 848, 852, 427 S.E.2d 257, 261 (Ga. 1993).
- ⁵ *Id.* at 262 Ga. at 851, 427 S.E.2d at 261.
- ⁶ 20 U.S.C. § 1232g(b)(1).
- ⁷ See *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).
- ⁸ *Red & Black, supra*.
- ⁹ See *Osborn v. Bd. of Regents of the Univ. of Wis.*, 647 N.W.2d 158 (Wis. 2002); *DTH Publishing Co. v. Univ. of N.C.*, 496 S.E.2d 8 (N.C. App.), *rev. denied*, 510 S.E.2d 382 (N.C. 1998); *E. Conn. State Univ. v. Freedom of Info. Comm'n.*, 1996 Westlaw 580966 (Conn. Super.).
- ¹⁰ *State ex rel. Miami Student v. Miami Univ.*, 680 N.E.2d 956 (Ohio 1997).
- ¹¹ *U.S. v. Miami Univ.*, 294 F.3d 797, 804 (6th Cir. 2002).
- ¹² *U.S. v. Miami Univ.*, 91 F. Supp.2d 1132 (S.D. Ohio 2000); *Miami Univ., supra*.
- ¹³ *Miami Univ.*, 294 F.3d at 810-815.
- ¹⁴ *Id.*
- ¹⁵ 34 C.F.R. § 99.3.
- ¹⁶ *Id.*
- ¹⁷ Letter from L. Rooker, Director, Family Compliance Office to C. Cummings (September 25, 2003) at <http://www.ed.gov/policy/gen/guid/fpco/doc/georgialtr.doc>
- ¹⁸ 20 U.S.C. § 1232(g)(a)(5)(A); 34 CFR § 99.3.
- ¹⁹ 20 U.S. C. § 1232(g)(a)(5)(B); 34 CFR § 99.37.

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- ²⁰ 34 C.F.R. § 99.3; see Steven N. Schatken, *Student Records at Institutions of Postsecondary Education: Selected Issues under the Family Educational Rights and Privacy Act of 1974*, 4 Journal of College and Univ. Law 147 (1977).
- ²¹ 34 CFR § 99.3; Schatken, at 436.
- ²² See O.C.G.A. § 20-2-281(o).
- ²³ Schatken, at 433.
- ²⁴ 20 U.S.C. 1232g(a)(4)(B)(ii).
- ²⁵ 20 U.S.C. § 1232g(a)(4)(B)(ii); see *Red & Black*, 262 Ga. at 851, 427 S.E.2d at 261.
- ²⁶ See O.C.G.A §§ 40-5-2(b), 50-18-72(a)(4); *Napper v. Georgia Television Co.*, 257 Ga. 156 (1987), see also *Atlanta Journal and Constitution v. City of Brunswick*, 265 Ga. 413 (1995); see generally Student Press Law Center, *Covering Campus Crime: A Handbook for Journalists*, 3rd ed. 2000, 8-9.
- ²⁷ See O.C.G.A. § 20-8-7.
- ²⁸ 20 U.S.C. § 1092(f)(4)(b)(i); 34 CFR § 668.46(a); see *Covering Campus Crime*, at 13-14.
- ²⁹ 20 U.S.C. § 1092(f)(4)(B)(ii); see *Covering Campus Crime*, at 13-14.
- ³⁰ 20 U.S.C. § 1092(f)(4)(A)(i)(ii); see *Covering Campus Crime*, at 13-14.
- ³¹ 34 C.F.R. § 668.46; see *Covering Campus Crime*, at 18.
- ³² *Id.*
- ³³ *Id.*
- ³⁴ 34 C.F.R. § 668.46(e); see *Covering Campus Crime*, at. 17.
- ³⁵ 20 U.S.C. § 1232g(a)(4)(B)(iv); 34 C.F.R. § 99.3.
- ³⁶ 20 U.S.C. § 1232g(a)(4)(B)(iv); 34 C.F.R. § 99.3.
- ³⁷ 20 U.S.C. § 1232g(a)(4)(B)(i).
- ³⁸ Schatken, at 430.
- ³⁹ *Id.*
- ⁴⁰ *Red & Black*, 262 Ga. 851-2, 427 S.E.2d at 260-61.

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⁴¹ Id.

⁴² *United States v. Miami Univ.*, 91 F. Supp.2d 1132 (S.D. Ohio 2000), *aff'd* 294 F.3d 797 (6th Cir. 2002).

⁴³ *See Hackworth v. Board of Education*, 214 Ga. App. 17, 447 S.E.2d 78 (1994); 1965-66 Op. Atty. Gen. No. 66-88.

⁴⁴ O.C.G.A. § 50-18-72(a) (11.3)(A).

⁴⁵ *See* O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).

⁴⁶ *See* O.C.G.A. § 50-18-72(a)(5).

⁴⁷ *See* O.C.G.A. § 45-18-53(b).

⁴⁸ *See* O.C.G.A. § 31-10-25.

⁴⁹ *See* O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).

⁵⁰ *See* O.C.G.A. §§ 35-3-34 (a)(1)(A), 35-3-34(d.1); *Napper v. Georgia Television*, 257 Ga. 156 (1987).

⁵¹ *See* O.C.G.A. § 15-6-72(c)(1).

⁵² *See Napper v. Georgia Television*, 257 Ga. 156 (1987).

⁵³ *See* O.C.G.A. § 50-18-72(a)(11.3)(A).

⁵⁴ *See* O.C.G.A. § 50-18-72(a)(11.3)(A); O.C.G.A. § 20-2-925; O.C.G.A. § 20-2-897.

⁵⁵ *See* O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).

⁵⁶ *See* O.C.G.A. § 20-2-210.

⁵⁷ Information not specifically exempt within documents must be released. *See* O.C.G.A. § 50-18-72(g).

⁵⁸ *See* O.C.G.A. § 20-2-210.

⁵⁹ *See* O.C.G.A. §§ 50-18-72(a)(11.3)(A), 50-18-72(13).

⁶⁰ Id.

⁶¹ O.C.G.A. § 20-2-57(a) (elementary and secondary). *See also Hackworth v. Board of Education*, 214 Ga. App. 17, 447 S.E.2d 78 (1994).

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⁶² Id.

⁶³ See *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 278 S.E.2d 305 (1989).

⁶⁴ O.C.G.A. § 50-18-72(a)(7); *Board of Regents v. Atlanta Journal*, 261 Ga. 350, 405 S.E.2d 43 (1991).

⁶⁵ See *Dooley v. Davidson*, 260 Ga. 577, 397 S.E.2d 922 (1990); *Macon Telegraph Publishing Co. v. Bd. of Regents*, 256 Ga. 443, 350 S.E.2d 23 (1986); Letter dated February 26, 2004 from Attorney General Thurbert Baker to Lynda Courts, Chairman of the Board of Trustees of the University of Georgia Foundation.

⁶⁶ O.C.G.A. § 50-18-72(a)(19).

⁶⁷ See *Howard v. Sumter Free Press, Inc.*, 272 Ga. 521 (2000).

⁶⁸ See *Schulten, Ward & Turner v. Fulton-DeKalb Hospital Authority*, 272 Ga. 725 (2000).

⁶⁹ See O.C.G.A § 50-18-70(d)(f), 50-18-72(h).

⁷⁰ See O.C.G.A. s 50-18-70(g).

⁷¹ See O.C.G.A § 50-18-71.2.

⁷² See O.C.G.A § 50-18-71(a)-(f), 50-18-71.2; *McFrugal Rental of Riverdale v. Garr*, 262 Ga. 369 (1992).

⁷³ See *Trammell v. Martin*, 200 Ga. App. 435 (1991).

⁷⁴ 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. § 99.31(a)(10); 34 CFR 99.36; *Brown v. City of Oneonta*, 106 F.3d 1125 (2nd Cir. 1997); *Jain v. State of Iowa*, 617 N.W.2d 293 (Iowa 2000).

⁷⁵ 20 U.S.C. § 1232g(h).

⁷⁶ O.C.G.A. § 20-2-757.

(a) All proceedings and hearings conducted under this subpart shall be confidential and shall not be subject to the open meetings requirement of Code Section § 50-14-1 or other open meetings laws.

(b) All electronic or other written records of all hearings conducted under this subpart; all statements of charges; all notices of hearings; and all written decisions rendered by a hearing officer, tribunal, the local board of education, or the State Board of Education shall not be subject to public inspection or other disclosure under Article 4 of Chapter 18 of Title 50 or other public disclosure laws;

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provided, however, the board or education shall prepare a written summary of any proceedings conducted under this subpart, which summary shall include a description of the incident and the disposition thereof but shall not contain the names of any party to the incident. The summary shall be a public record.

⁷⁷ 20 U.S.C. § 1232g(b)(6)(A); 34 C.F.R. § 99.31(a)(13).

⁷⁸ 20 U.S.C. § 1232g(b)(6)(B).

⁷⁹ 34 C.F.R. § 99.31(a)(9).

⁸⁰ 34 C.F.R. 99.31(a)(1).

⁸¹ 34 C.F.R. § 99.31(a)(3).

⁸² 34 C.F.R. § 99.31(a)(6).

⁸³ 34 C.F.R. § 99.31(a)(7).

⁸⁴ 34 C.F.R. § 99.31(a)(15).

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This booklet was prepared by Hollie Manheimer of the Georgia First Amendment Foundation, and Kathryn L. Allen, formerly of the Office of the Attorney General of Georgia, and its contents have been reviewed by the Attorney General of Georgia, the Georgia First Amendment Foundation, the Georgia Parent Teacher Association, and the Georgia Press Association. All of these groups encourage school community members to acquaint themselves with the Georgia Open Records and Georgia Open Meetings acts and to use this booklet for guidance. For further information about this project, please contact the Georgia First Amendment Foundation at (404) 525-3646 or www.gfaf.org. The authors of this publication wish to extend special gratitude to the following people for their help in preparing this manual:

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