

SB270 ENROLLED



1 SB270
2 1C5VZ33-2
3 By Senator Orr
4 RFD: County and Municipal Government
5 First Read: 02-Apr-24



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1 Enrolled, An Act,

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4 Relating to public records; to amend Sections 36-12-40
5 and 36-12-41, Code of Alabama 1975, and to add Sections
6 36-12-43, 36-12-44, 36-12-45, and 36-12-46 to the Code of
7 Alabama 1975, to establish procedures for requesting and
8 obtaining public records; and to make nonsubstantive,
9 technical revisions to update the existing code language to
10 current style.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 "§36-12-40

15 (a) Every citizen resident has a right to inspect and
16 take a copy of any public ~~writing~~ record of this state, except
17 as otherwise expressly provided by ~~statute~~ applicable law.

18 Provided however, registration and circulation records and
19 information concerning the use of the public, public school,
20 or college and university libraries of this state shall be
21 exempted from this section. Provided further, any parent of a
22 minor child shall have the right to inspect the registration
23 and circulation records of any school or public library that
24 pertain to his or her child. Notwithstanding the foregoing,
25 records concerning security plans, procedures, assessments,
26 measures, or systems, and any other records relating to, or
27 having an impact upon, the security or safety of persons,
28 structures, facilities, or other infrastructures, including



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29 without limitation information concerning critical
30 infrastructure, ~~(as defined at 42 U.S.C. § 5195c(e), as~~
31 ~~amended)~~ and critical energy infrastructure information, ~~(as~~
32 ~~defined at 18 C.F.R. § 388.113(c)(1), as amended)~~ the public
33 disclosure of which could reasonably be expected to be
34 detrimental to the public safety or welfare, and records the
35 disclosure of which would otherwise be detrimental to the best
36 interests of the public shall be exempted from this section.
37 Any public officer who receives a request for records that may
38 appear to relate to critical infrastructure or critical energy
39 infrastructure information, shall notify the owner of such
40 infrastructure in writing of the request and provide the owner
41 an opportunity to comment on the request and on the threats to
42 public safety or welfare that could reasonably be expected
43 from public disclosure ~~on~~ of the records.

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

48 "§36-12-41

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



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57 Section 2. Sections 36-12-43, 36-12-44, 36-12-45, and
58 36-12-46 are added to the Code of Alabama 1975, to read as
59 follows:

60 §36-12-43

61 (a) It is the policy of the state to promptly provide
62 residents with the opportunity to inspect public records and
63 to request a copy, subject to payment of reasonable fees and
64 to appropriate protections for private, confidential,
65 privileged, and other nonpublic information, and to the
66 interest of the general public in having the business of
67 government carried on efficiently and without undue
68 interference.

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

71 (1) BUSINESS DAY. A day that the public officer's
72 office is open to the public and conducting normal operations.

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

76 (3) RESIDENT. An individual who is permanently
77 domiciled in Alabama with an expectation to remain in Alabama
78 as demonstrated by reasonable proof of residency such as, but
79 not limited to, an Alabama driver license or voter
80 registration.

81 (4) STANDARD REQUEST. A public records request that
82 seeks one or more specifically and discretely identified
83 public records that the public officer determines would take
84 less than eight hours of staff time to process considering the



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85 time needed to identify and retrieve any responsive records
86 and to redact or take other measures to withhold protected
87 information. A standard request should require no or minimal
88 clarification by the requester.

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

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

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

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

103 d. A statement that denies the request with reasons
104 stated therefor.

105 e. A statement that denies the request on the grounds
106 that the requested public record does not exist within the
107 government agency. If known to the public officer, the public
108 officer may identify the proper custodian or location for the
109 requested public record.

110 f. A statement that denies the request for failure to
111 substantially complete a standard request form.

112 g. A statement that denies the request for failure to



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113 substantially comply with the written procedures established
114 by the public officer for such request.

115 h. A statement that denies the request because the
116 records sought are not public.

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

123 (c) This article is not intended to, and does not,
124 change or in any way affect any protections for private,
125 confidential, privileged, or other nonpublic information
126 provided under applicable law.

127 §36-12-44

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

130 (1) The public officer may require the requester to
131 submit his or her request using a standard request form or by
132 following the written procedures for accepting requests for
133 public records established by the public officer.

134 (2) The public officer may require the requester to pay
135 a reasonable fee set by the public officer before the
136 requester may receive any public records. If the public
137 officer elects to charge a fee, the public officer shall
138 notify the requester of the estimated fee and withhold any
139 public records until receipt of payment. The requester may opt
140 not to pay the fee and thus not receive any substantive



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141 response. Additionally, the public officer shall have the
142 discretion to require the requester to pay all or a portion of
143 the estimated fee prior to searching for any responsive public
144 records.

145 (3) The public officer shall acknowledge a proper
146 request within 10 days of receiving the request.

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

155 (5) There shall be a rebuttable presumption that a
156 proper standard request has been denied by the public officer
157 if:

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

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

165 (6) There shall be no presumption that a proper
166 standard request has been denied if:

167 a. The request is not proper or the public officer is
168 not obligated or required to respond as provided in this



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169 section;

170 b. The public officer has responded in part;

171 c. The public officer and requester have reached an
172 agreement regarding the time or substance, or both, of the
173 response;

174 d. Negotiations are ongoing between the public officer
175 and the requester; or

176 e. The public officer has reasonably communicated the
177 status of the request to the requester.

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

181 (1) The public officer shall require the requester to
182 submit his or her request using a standard request form or by
183 following the written procedures for accepting requests for
184 public records established by the public officer.

185 (2) The public officer shall require the requester to
186 pay a reasonable fee set by the public officer before
187 providing a substantive response to the requester. The public
188 officer shall notify the requester in advance of any likely
189 fees and shall withhold any substantive response until receipt
190 of payment. Additionally, the public officer shall have the
191 discretion to require the requester to pay all or a portion of
192 the estimated fee prior to searching for any responsive public
193 records.

194 (3) The public officer shall acknowledge the request
195 within 10 business days of receiving the request.

196 (4) The public officer shall notify the requester



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197 within 15 business days after acknowledging receipt that the
198 request qualifies as a time-intensive request. At that time,
199 the public officer shall notify the requester of any likely
200 fees and allow the requester to withdraw the time-intensive
201 request and submit a new request that is not a time-intensive
202 request. If the requester elects to proceed with a
203 time-intensive request, the public officer shall provide a
204 substantive response fulfilling or denying the request within
205 45 business days after the requester elected to proceed with
206 his or her time-intensive request. The public officer may
207 extend this period in 45-business-day increments by notifying
208 the requester in writing.

209 (5) At or around the time of designating the request as
210 time-intensive, the public officer shall make a record in a
211 log maintained for keeping track of currently pending
212 time-intensive requests. For each such currently pending
213 request, the log shall identify the name of the requester and
214 the date of acknowledgment pursuant to subdivision (3). The
215 log shall be a confidential document that is not subject to
216 disclosure pursuant to this article, provided the log may
217 remain discoverable pursuant to proper discovery methods
218 provided under applicable rules of procedure.

219 (6) There shall be a rebuttable presumption that a
220 proper time-intensive request has been denied by the public
221 officer if:

222 a. A substantive response is not provided within the
223 earlier of 180 business days or 270 calendar days following
224 the requester's election to proceed with a time-intensive



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225 request.

226 b. The records are not produced within the earlier of
227 180 business days or 270 calendar days following the payment
228 of the estimated fees to the public officer.

229 (7) There shall be no presumption that a proper
230 time-intensive request has been denied if:

231 a. The request is not proper or the public officer is
232 not obligated or required to respond as provided in this
233 section;

234 b. The public officer has responded in part;

235 c. The public officer and requester have reached an
236 agreement regarding the time or substance, or both, of the
237 response;

238 d. Negotiations are ongoing between the public officer
239 and the requester; or

240 e. The public officer has reasonably communicated the
241 status of the request to the requester.

242 (c) A request made pursuant to this article shall
243 identify the requested public record with reasonable
244 specificity. A public officer shall not be obligated to
245 respond to a public records request that is vague, ambiguous,
246 overly broad, or unreasonable in scope.

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

250 (e) A public officer shall not be required to respond
251 to requests that seek information or other materials that are
252 not public records.



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253 (f) A public officer may request reasonable evidence to
254 establish proof of residency. A public officer shall have the
255 discretion to respond to public records requests made by
256 nonresidents, in which case, a public officer's decision to
257 respond to such requests shall not operate as a waiver of the
258 public officer's right to deny other or future requests made
259 by nonresidents.

260 (g) If a public officer responds to a request by
261 seeking clarification or additional information, the timelines
262 established in this section shall be tolled and shall restart
263 once the public officer receives the requested clarification
264 or additional information as if the requester had submitted a
265 new request. A public officer's decision to seek clarification
266 or additional information with respect to any particular
267 request shall not operate as a waiver of the public officer's
268 right to seek clarification or additional information in
269 response to other, future requests.

270 (h) Nothing in this article shall be construed to
271 prohibit a public officer from processing a public records
272 request in a manner that is less expensive or more prompt from
273 the perspective of the requester.

274 §36-12-45

275 (a) (1) A resident may request access to a public record
276 by following the written procedures for accepting such
277 requests established by the public officer having custody of
278 the public record. The written procedures may establish any of
279 the following:

280 a. A standard request form for use in submitting a



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281 public records request.

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

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

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

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

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

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

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

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

303 (2) Receipt of a hand-delivered public records request
304 occurs when the request is received at the public officer's
305 main office or principal place of business. Receipt of a
306 mailed public records request occurs on the date of actual
307 receipt by the public officer. A certified mail receipt or
308 similar signed postage receipt shall be prima facie evidence



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309 of receipt by the public officer.

310 (3) The standard request form shall read substantially as
311 follows, provided a public officer may require additional
312 information or modify the order or format in which the
313 information is requested:

314 "Requester's contact information:

315 Name: _____

316 Phone number: _____

317 Email address: _____

318 Street address: _____

319 City: _____

320 State: _____

321 Zip: _____

322 Agency you are requesting public records from:

323 _____

324 Date of request: _____

325 Records requested: (Be as specific as possible. A
326 public officer is not obligated to respond to a request
327 that is vague, ambiguous, overly broad, or unreasonable
328 in scope, nor is a public officer obligated to respond
329 to a request that seeks records that do not exist or
330 materials that are not public records. Additionally,
331 extensive requests for public records may increase the
332 fees to cover the administrative cost of searching and
333 copying the requested records.)

334 _____

335 _____

336 _____



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337 _____
338 Payment of fees may be required before your request is
339 fulfilled.
340 By submitting this request, you certify that you are an
341 Alabama resident with standing to make a request for
342 public records pursuant to Alabama law."
343 §36-12-46
344 Nothing in this article shall be construed to permit
345 any party to a pending or threatened action, suit, or
346 proceeding to obtain information regarding a matter relevant
347 to the pending or threatened action, suit, or proceeding in
348 lieu of the proper discovery methods provided under applicable
349 rules of procedure.
350 Section 3. This act shall become effective on October
351 1, 2024.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

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Senate 18-Apr-24

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 02-May-24

Senate concurred in House amendment 07-May-24

By: Senator Orr