



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Georgia's Open Records and Open Meetings Acts: Sunshine Laws and Nonprofit Organizations

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Under Georgia law, government agencies and nonprofits meeting certain criteria are required to make certain records and meetings available to the public. The Open Records Act and the Open Meetings Act, known collectively as the "Georgia Sunshine Laws," provide broad public access to certain records and meetings. This article outlines which nonprofits may be subject to the Georgia Sunshine Laws, a general overview of each law and their impact on such nonprofits.

The Open Records Act (the "ORA")¹

The ORA gives the public the right to inspect and copy "public records" of an "agency", subject to certain exceptions discussed below. "Public records" include virtually all types of records, including documents, papers, letters, maps, books, tapes, photographs, data and computer-based or generated information (e.g., text messages, email, Teams, etc.).

"Agencies" includes any agency of the state or local government in Georgia and also includes nonprofits that receive more than one-third of funding from a direct allocation of tax funds from a state or local government agency (each, an "Agency Funded Nonprofit"). A nonprofit that has simply received a government grant via a competitive application process, depending on the size of the government grant and degree of government oversight, would generally not be considered an Agency Funded Nonprofit. The ORA also impacts nonprofits that are not Agency Funded Nonprofits if they prepare and maintain records in the performance of a service or function for or on behalf of a state or local government agency (each, a "Government Contractor Nonprofit").

The Georgia legislature recently revised the ORA to require requests be made only to a "custodian" of such records, meaning the agency that has charge, custody, care, and control over such records or to an employee of such agency that is specifically designated to receive such requests. Therefore, records requests may only be made to a state or local government agency or to an Agency Funded Nonprofit. Private citizens seeking records from a Government Contractor Nonprofit must make the request through the appropriate custodian, and then such custodian can seek the records from the Government Contractor Nonprofit. A Government Contractor Nonprofit is still required to

¹ Separate from the ORA, the Internal Revenue Service requires that all 501(c)(3) tax-exempt organizations make certain records available for public inspection, as outlined in [this article](#).

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produce responsive records if requested by a custodian that received a records request (Government Contractor Nonprofits should refer to any contracts with a custodian to determine their obligations).

As a result, Agency Funded Nonprofits and Government Contractor Nonprofits alike should carefully evaluate their record making and storage practices to prepare for a potential records request.

Exceptions to the ORA

Under the ORA, custodians must disclose all information responsive to a request. However, roughly 50 types of information are specifically exempted from disclosure, generally to maintain secrecy of personally identifiable information or other confidential or sensitive information. The ORA narrowly defines these exemptions, and any responsive information not disclosed pursuant to a request must fit within one of these specific exemptions.

Exemptions likely to be most relevant to nonprofits include:

- Records identifying a person as a member, supporter, volunteer, or donor to a nonprofit organization;
- Records not in existence at the time of request;
- Records required by federal statute or regulation to be kept confidential (e.g., FERPA);
- Records compiled for law enforcement purposes that reveal certain confidential information;
- Records regarding the appointment, employment, or dismissal of a public officer or employee;
- Records that reveal personally identifiable information (e.g., social security number, insurance, financial or medical information);
- Records containing information regarding public utility, cable, internet, or telephone accounts held by private customers;
- Any trade secrets or proprietary data;
- Confidential attorney work product and the legal conclusions in records containing communications subject to attorney-client privilege;
- Records pertaining to rate-setting and the administration of liability insurance; and
- Records maintained by the Department of Economic Development relating to a development project before that project is secured by a binding commitment.

Logistics and Compliance

If a nonprofit receives an ORA request, it should first determine whether it is subject to the ORA – is it an Agency Funded Nonprofit or a Government Contractor Nonprofit or neither? If a nonprofit is an Agency Funded Nonprofit, the nonprofit should determine if it is the “custodian” of the requested records. If an Agency Funded Nonprofit is not the custodian, or if it is a Government Contractor Nonprofit, then the nonprofit should inform

the requesting party and will not be responsible to produce the requested records. However, such nonprofit may be required to make the records available to the custodian in the event the requesting party makes the request of the custodian. If a nonprofit is neither an Agency Funded Nonprofit nor a Government Contractor Nonprofit, then there is no requirement to produce any records under the ORA.

If an Agency Funded Nonprofit is the “custodian” of requested records, it must provide some response within three business days to the requestor. The custodian should determine if all or any part of the records fit within the exemptions noted above. If the requested records do not fit any exemptions, the nonprofit must respond to the requesting party within three business days by providing the available records able to be located and produced in that time or providing a description of the responsive records and a timetable for when the records will become available. If exemptions are available, the nonprofit must notify the requesting party within three days of either receiving the request or, in the event of a delay, retrieval of the requested records, citing the applicable exemption(s).

For records that are subject to disclosure, the custodian only needs to provide reasonable access for inspection and copying to the requesting party. The ORA does not require a custodian to comb through files, compile sets of documents, make copies, or summarize information for the requesting party. When requested records contain exempt information, such information may be redacted before records are presented to the requesting party. For electronic records, a custodian must produce electronic copies or printouts, whichever the requesting party prefers.

Custodians can charge requesting parties for the search, retrieval, and redaction costs, but must use “the most economical means” to retrieve and identify documents. Any such charges must be no higher than the prorated hourly salary of the lowest paid full-time employee with the necessary training to perform the request, with no charge for the first fifteen minutes. Custodians can also charge reasonable costs for copies, up to 10 cents per page, or the actual cost for electronic records. Where retrieval costs are estimated above \$25, custodians can require the requesting party to agree in advance to pay the total costs. For estimated costs above \$500, custodians can require prepayment from the requesting party. If available, custodians can provide access to records through a publicly accessible website rather than providing separate printouts or copies. However, custodians must still respond to requests for records even if the records are publicly available.

Penalties for Non-Compliance

Violations of the ORA include knowingly and willfully refusing to provide access to non-exempt records, failing to provide access within the specified time limits, or intentionally making records difficult to obtain or review. Custodians that violate the ORA are subject to a fine or civil penalty of up to \$1,000 for the first offense. For repeat violations within a one-year period, penalties may increase to a maximum of \$2,500 per violation. These penalties only apply when requests for records are made in

writing. There are no penalties for failure to comply with a verbal request.

Open Meetings Act (the “OMA”)

The OMA requires certain meetings to be open to the public. The purpose is to reduce distrust of government decision-making by eliminating closed-door meetings related to government business. The OMA applies to “agencies” under the same definition as the ORA, meaning Agency Funded Nonprofits are required to comply.

A nonprofit subject to the OMA must make certain of its meetings open to the public, including online meetings or meetings by teleconference. The public may also record audio and/or video during meetings.

A “meeting” is defined in the OMA as any gathering of a quorum of the members of a governing body or any committee of an agency at which any official business, policy, or public matter of the agency is discussed or voted upon. Meetings may be regularly scheduled, a special meeting, or an emergency meeting. So long as the primary purpose is not to evade or avoid the requirements of the OMA, meetings do not include the gathering of a quorum for inspections of facilities or property, training, meetings with legislative or executive branches without other action taken by the members, traveling (e.g., carpooling), or other events where no official business is discussed (e.g., social or religious events).

Certain meetings are not required to be open to the public, including meetings, or portions of meetings, in which members discuss:

- the appointment, employment, disciplinary action, or dismissal of an officer or employee,
- matters within the attorney-client privilege as recognized by Georgia law,
- adoptions or related proceedings, or
- mediation to facilitate the resolution of conflict.

Any nonprofit subject to OMA must make all votes open to the public, including those regarding the acquisition of real estate. Votes taken in closed or “executive” sessions may become binding only after relevant information is publicly disclosed and such votes are ratified in an open meeting.

Logistics and Compliance

To comply with the OMA, nonprofits subject to the Act must:

- set the time, place, and dates of regular meetings;
- post scheduling information in a conspicuous place available to the public at the regular meeting site at least one week in advance;
- make the agenda of all matters expected to be discussed available to the public prior to the meeting;
- post the agenda at the meeting site during the two-weeks before the

meeting;

- allow visual and sound recording during the meeting;
- make available a summary of the subjects discussed and a list of members present at the meeting within two days after a meeting; and
- inform the public at least twenty-four hours before a cancelled or postponed meeting at the place of the regular meetings.

There are exceptions to the above for special meetings and emergency meetings. Special meetings must be noticed to the public at least 24 hours beforehand, and for “emergency meetings”—meetings in the interest of public safety or the preservation of property or public services—must be noticed to the public as soon as possible and provide the public simultaneous access. Individual members of an agency or committee are allowed to attend regular physical meetings by teleconference, but no more than twice per year absent emergency conditions or a written opinion from a health professional.

Additionally, minutes of regular meetings must be recorded and made publicly available. Minutes should be promptly recorded and approved no later than immediately following the next regular meeting and include the names of all members present, a description of each motion or proposal made, the identity of the people making and seconding each motion or proposal, and a record of all votes. Minutes of executive sessions also need to be recorded and approved, but are not required to be made public. These minutes should specify each issue discussed, but are not required to record the substance of any issues subject to attorney-client discussion.

Penalties for Non-Compliance

Any action taken at a meeting that does not comply with the OMA is not binding and may be challenged. Penalties for OMA violations are the same for violations of the ORA—nonprofits that violate the OMA are subject to a fine or civil penalty of up to \$1,000 for the first offense, and up to \$2,500 for repeat violations within a one-year period.